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Earl Warren Oral History Project

JAPANESE-AMERICAN RELOCATION REVIEWED

Volume I: Decision and Exodus

James Rowe	The Japanese Evacuation Decision
Percy C. Heckendorf	Planning for the Japanese Evacuation: Reforming Regulatory Agency Procedures
Tom Clark	Comments on the Japanese-American Relocation
Edward Ennis	A Justice Department Attorney Comments on the Japanese-American Relocation
Herbert Wenig	The California Attorney General's Office, the Judge Advocate General Corps, and Japanese-American Relocation

Volume II: The Internment

Robert Cozzens	Assistant National Director of the War Relocation Authority
Dillon S. Myer	War Relocation Authority: The Director's Account
Ruth Kingman	The Fair Play Committee and Citizen Participation

With An Introduction by  
Mike M. Masaoka

Interviews Conducted by  
Rosemary Levenson  
Amelia Fry  
Miriam Feingold Stein





Spring 1990

## E. J. Ennis, Former ACLU Chair, Dies

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**E**dward J. Ennis, chair of the ACLU from 1969 to 1976 and a longtime board member, died of complications related to diabetes on January 7, in New York City's Lenox Hill hospital. He was 82 years old.

Ennis was involved with, and presided over, the ACLU during tumultuous times. As general counsel from 1954 through 1969, he wrote numerous ACLU briefs challenging Cold War measures. In 1973, under his leadership the ACLU became the first major national organization to call for the impeachment of President Richard M. Nixon. He also led the ACLU's challenges to the constitutionality of the Vietnam War.

Ennis first came into contact with the ACLU during World War II, when, as director of the U. S. Justice Department's Enemy Alien Control Unit, he strongly protested the plan to intern Japanese Americans in concentration camps on the West coast. But instead of resigning, he coached ACLU founding director Roger Baldwin on how to fight the very program that he, Ennis, was administering. More than 40 years later, Ennis was a key witness in the trial of Gordon Hirabayashi, a Japanese American who sought to void his wartime conviction for violating a curfew. Ennis



*Edward J. Ennis*

testified that the War Department had withheld evidence, contained in military intelligence records, that Japanese Americans were loyal to the United States.

Ennis left the Justice Department in 1947 and immediately accepted Baldwin's invitation to join the ACLU board, thus beginning his tenure of more than 40 years. Elected chair in 1969, he also headed the Due Process Committee from 1964-69, served on the Executive Committee, and served on the national board until 1989.

Current ACLU President Norman Dorsen, Ennis's successor, told the *New York Times* that Ennis "was in the vanguard of many constitutional battles waged by the ACLU. Not well known to the public, he nevertheless was...one of the all time heroes of American civil liberties."

Ennis is survived by his wife, Marie Joyce, and his stepson from a previous marriage, Mark Zauderer, who heads a New York law firm.

—John Rosenthal





# JAPANESE-AMERICAN RELOCATION REVIEWED

## Volume I Decision and Exodus

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The California Attorney General's Office

The Judge Advocate General Corps





## PREFACE

The Earl Warren Oral History Project, a special project of the Regional Oral History Office, was inaugurated in 1969 to produce tape-recorded interviews with persons prominent in the arenas of politics, governmental administration, and criminal justice during the Warren Era in California. Focusing on the years 1925-1953, the interviews were designed not only to document the life of Chief Justice Warren but to gain new information on the social and political changes of a state in the throes of a depression, then a war, then a postwar boom.

An effort was made to document the most significant events and trends by interviews with key participants who spoke from diverse vantage points. Most were queried on the one or two topics in which they were primarily involved; a few interviewees with special continuity and breadth of experience were asked to discuss a multiplicity of subjects. While the cut-off date of the period studied was October 1953, Earl Warren's departure for the United States Supreme Court, there was no attempt to end an interview perfunctorily when the narrator's account had to go beyond that date in order to complete the topic.

The interviews have stimulated the deposit of Warreniana in the form of papers from friends, aides, and the opposition; government documents; old movie newsreels; video tapes; and photographs. This Earl Warren collection is being added to The Bancroft Library's extensive holdings on twentieth century California politics and history.

The project has been financed by four outright grants from the National Endowment for the Humanities, a one year grant from the California State Legislature through the California Heritage Preservation Commission, and by gifts from local donors which were matched by the Endowment. Contributors include the former law clerks of Chief Justice Earl Warren, the Cortez Society, many long-time supporters of "the Chief," and friends and colleagues of some of the major memoirists in the project. The Roscoe and Margaret Oakes Foundation and the San Francisco Foundation have jointly sponsored the Northern California Negro Political History Series, a unit of the Earl Warren Project.

Particular thanks are due the Friends of The Bancroft Library who were instrumental in raising local funds for matching, who served as custodian for all such funds, and who then supplemented from their own treasury all local contributions on a one-dollar-for-every-three dollars basis.

The Regional Oral History Office was established to tape record autobiographical interviews with persons prominent in the history of California and the West. The Office is under the administrative supervision of James D. Hart, Director of The Bancroft Library.

Amelia R. Fry, Director  
Earl Warren Oral History Project

Willa K. Baum, Department Head  
Regional Oral History Office

30 June 1976  
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## EARL WARREN ORAL HISTORY PROJECT

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\* Deceased during the term of the project.



EARL WARREN ORAL HISTORY PROJECT  
(California, 1926-1953)

Interviews Completed - January 1977

Single Interview Volumes

- A. Wayne Amerson, Northern California and Its Challenges to a Negro in the Mid-1900s. 1974. With an introduction by Henry Ziesenhenn
- Edwin L. Carty, Hunting, Politics, and the Fish and Game Commission. 1975.
- Ford Chatters, View from the Central Valley: The California Legislature, Water, Politics, and The State Personnel Board. 1976. With an introduction by Harold Schutt
- C.L. Dellums, International President of the Brotherhood of Sleeping Car Porters and Civil Rights Leader. 1973. With an introduction by Tarea Pittman
- McIntyre Faries, California Republicans, 1934-1953. 1973.
- Richard Graves, Theoretician, Advocate, and Candidate in California State Government. 1973.
- Emily H. Huntington, A Career in Consumer Economics and Social Insurance. 1971. With an introduction by Charles A. Gulick
- Oscar J. Jahnsen, Enforcing the Law Against Gambling, Bootlegging, Graft, Fraud, and Subversion, 1922-1942. 1976.
- Helen S. MacGregor, A Career in Public Service with Earl Warren. 1973. With an introduction by Earl Warren
- Richard Allen McGee, Participant in the Evolution of American Corrections: 1931-1973. 1976. With an introduction by Caleb Foote
- Donald McLaughlin, Careers in Mining Geology and Management, University Governance and Teaching. 1975. With an introduction by Charles Meyer
- Edgar James Patterson, Governor's Mansion Aide to Prison Counselor. 1975. With an introduction by Merrell F. Small
- Tarea Pittman, NAACP Official and Civil Rights Worker. 1974. With an introduction by C.L. Dellums
- Robert B. Powers, Law Enforcement, Race Relations: 1930-1960. 1971. With an introduction by Robert W. Kenny
- William Byron Rumford, Legislator for Fair Employment, Fair Housing, and Public Health. 1973. With an introduction by A. Wayne Amerson
- Arthur H. Sherry, The Alameda County District Attorney's Office and the California Crime Commission. 1976.
- Merrell F. Small, The Office of the Governor Under Earl Warren. 1972.





Paul Schuster Taylor, California Social Scientist.

Volume I: Education, Field Research, and Family. 1973. With an introduction by Lawrence I. Hewes

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Maryann Ashe and Ruth Smith Henley, Earl Warren's Bakersfield.

Omar Cavins, Coming of Age in Bakersfield.

Francis Vaughan, School Days in Bakersfield.

Ralph Kreiser, A Reporter Recollects the Warren Case.

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Perspectives on the Alameda County District Attorney's Office. With an introduction by Arthur H. Sherry

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John F. Mullins, How Earl Warren Became District Attorney.

Edith Balaban, Reminiscences About Nathan Harry Miller, Deputy District Attorney, Alameda County.

Judge Oliver D. Hamlin, Reminiscences About the Alameda County District Attorney's Office in the 1920s and 30s.

Mary Shaw, Perspectives of a Newspaperwoman.

Willard W. Shea, Recollections of Alameda County's First Public Defender.

Volume II: 1973.

Richard Chamberlain, Reminiscences About the Alameda County District Attorney's Office.

Lloyd Jester, Reminiscences of an Inspector in the District Attorney's Office.

Beverly Heinrichs, Reminiscences of a Secretary in the District Attorney's Office.

Clarence Severin, Chief Clerk in the Alameda County District Attorney's Office.

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E.A. Daly, Alameda County Political Leader and Journalist.

John Bruce, A Reporter Remembers Earl Warren.

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J. Frank Coakley, A Career in the Alameda County District Attorney's Office.

Albert E. Hederman, Jr., From Office Boy to Assistant District Attorney.

Lowell Jensen, Reflections of the Alameda County District Attorney.

James H. Oakley, Early Life of a Warren Assistant.

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Aubrey Grossman, A Defense Attorney Assesses the King, Ramsay, Conner Case.

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Herbert Resner, The Recollections of the Attorney for Frank Conner.

Miriam Dinkin Johnson, The King, Ramsay, Conner Defense Committee, 1938-1941.

Peter Odeen, Captain of the Point Lobos.





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Paul Heide, A Warehouseman's Reminiscences.

U.S. Simonds, A Carpenter's Comments.

Ernest H. Vernon, A Machinist's Recollections.

Labor Leaders View the Warren Era. 1976. With an introduction by George W. Johns  
Robert S. Ash, Alameda County Labor Council During the Warren Years.  
Cornelius J. Haggerty, Labor, Los Angeles, and the Legislature.

The Japanese-American Relocation Reviewed. With an introduction by Mike M. Masaoka  
Volume I: Decision and Exodus. 1976.

Tom Clark, Comments on the Japanese-American Relocation.

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Robert B. Cozzens, Assistant National Director of the War Relocation Authority.

Dillon S. Myer, War Relocation Authority: The Director's Account.

Ruth W. Kingman, The Fair Play Committee and Citizen Participation.

Hisako Hibi, paintings of Tanforan and Topaz camps.

The Governor and the Public, the Press, and the Legislature. 1973.

Marguerite Gallagher, Administrative Procedures in Earl Warren's Office, 1938-53.

Verne Scoggins, Observations on California Affairs by Governor Earl Warren's Press Secretary.

Beach Vasey, Governor Warren and the Legislature.

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Russel VanArsdale Lee, M.D., Pioneering in Prepaid Group Medicine.

Byrl R. Salsman, Shepherding Health Insurance Bills Through the California Legislature.

Gordon Claycombe, The Making of a Legislative Committee Study.

John W. Cline, M.D., California Medical Association Crusade Against Compulsory State Health Insurance.

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Frank F. Tallman, M.D., Dynamics of Change in State Mental Institutions.

Portia Bell Hume, M.D., Mother of Community Mental Health Services.

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Malcolm H. Merrill, M.D., M.P.H., A Director Reminisces.

Frank M. Stead, Environmental Pollution Control.

Henry Ongerth, Recollections of the Bureau of Sanitary Engineering.

Kent A. Zimmerman, M.D., Mental Health Concepts.

Lawrence Arnstein, Public Health Advocates and Issues.



California State Finance in the 1940s. 1974. With an introduction by Stanley Scott  
Fred Links, An Overview of the Department of Finance.  
Ellis Groff, Some Details of Public Revenue and Expenditure in the 1940s.  
George Killion, Observations on Culbert Olson, Earl Warren, and Money Matters  
in Public Affairs.  
A. Alan Post, Watchdog on State Spending.  
Paul Leake, Statement on the Board of Equalization.

Earl Warren and the Youth Authority. 1972. With an introduction by Allen F. Breed  
Karl Holton, Developments in Juvenile Correctional Techniques.  
Kenyon Scudder, Beginnings of Therapeutic Correctional Facilities.  
Heman Stark, Juvenile Correctional Services and the Community.  
Kenneth Beam, Community Involvement in Delinquency Prevention.

Earl Warren's Campaigns.

Volume I: 1976.

Stanley N. Barnes, Experiences in Grass Roots Organization.  
Thomas J. Cunningham, Southern California Campaign Chairman for Earl Warren, 1946.  
Murray Draper, Warren's 1946 Campaign in Northern California.  
William S. Mailliard, Earl Warren in the Governor's Office.  
Archibald M. Mull, Jr., Warren Fund-Raiser; Bar Association Leader.  
Rollin Lee McNitt, A Democrat for Warren.

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Florence Clifton, California Democrats, 1934-1950.  
Robert Clifton, The Democratic Party, Culbert L. Olson, and the Legislature.  
James Roosevelt, Campaigning for Governor Against Earl Warren, 1950.  
George Outland, James Roosevelt's Primary Campaign, 1950.  
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Bee Perspectives of the Warren Era. 1976.

Richard Rodda, From the Capitol Press Room.  
Herbert L. Phillips, Perspective of a Political Reporter.  
Walter P. Jones, An Editor's Long Friendship with Earl Warren.

The Warrens: Four Personal Views. 1976.

Horace Albright, Earl Warren Job Hunting at the Legislature.  
Irving and Jean Stone, Earl Warren's Friend and Biographer.  
Betty Foot Henderson, Secretary to Two Warrens.  
Benjamin H. Swig, Shared Social Concerns.

Earl Warren: Views and Episodes. 1976.

Mildred Hale, Schools, the PTA, and The State Board of Education.  
Clark Kerr, University of California Crises: Loyalty Oath and the Free Speech  
Movement.  
Adrian Kragen, State and Industry Interests in Taxation, and Observations of  
Earl Warren.  
Geraldine McConnell, Governor Warren, the Knowlands, and Columbia State Park.  
Carey McWilliams, California's Olson-Warren Era: Migrants and Social Welfare.

Hunting and Fishing With Earl Warren. 1976.

Bartley Cavanaugh, A Mutual Interest in Government, Politics, and Sports.  
Wallace Lynn, Hunting and Baseball Companion.





From: Uprooted Americans, Dillon Myer. University of Arizona Press, Tucson, 1971.

## *Chronology*

### *1941*

December 7 — Pearl Harbor was attacked by the Japanese.

December 15 — Statement was made by Secretary Knox of U. S. Navy alleging "effective fifth column work" in Hawaii.

### *1942*

January 5 — John B. Hughes, in a radio broadcast, criticized the Department of Justice and urged evacuation of all Japanese. This kicked off the campaign for evacuation.

January 29 — U. S. Attorney General Francis Biddle issued the first of a series of orders establishing limited strategic areas along the Pacific Coast and requiring the removal of all enemy aliens from these areas.

January 30 — Colonel Karl Bendetsen, as the War Department's representative, appeared before the West Coast Congressional delegation and was reported as having stated that "military judgment on the West Coast on whether or not this evacuation of citizens and aliens should take place was positively in the affirmative."

February 10 (approx.) — Opinion was given to Attorney General Biddle by a team of lawyers (Cohen, Cox, and Rauh) upholding the legality of evacuation under the President's war powers.

February 12 — Walter Lippmann's syndicated column appeared. It was entitled "The Fifth Column on the Coast."



- February 13 — West Coast Congressional delegation sent a letter to President Roosevelt recommending the "immediate evacuation of all persons of Japanese lineage . . . aliens and citizens alike" from the "entire strategic area" of California, Washington, and Oregon.
- February 14 — Lt. Gen. John L. DeWitt, Commanding General of the Western Defense Command, sent a memorandum to Secretary of War Henry L. Stimson recommending the evacuation of "Japanese and other subversive persons" from the West Coast area.
- February 19 — President Roosevelt signed Executive Order No. 9066 authorizing the Secretary of War or any military commander designated by the Secretary, to establish "military areas" and exclude therefrom "any or all persons."
- February 20 — Secretary Stimson designated General DeWitt as a military commander empowered to carry out an evacuation within his command under the terms of Executive Order 9066.
- February 21 — The Tolan Committee hearings were started in San Francisco and continued until March 12 on the West Coast.
- February 23 — An enemy seaborne craft shelled Goleta, California, near Santa Barbara. A timely act from the standpoint of the exclusionists.
- March 2 — General DeWitt issued Proclamation No. 1 designating the Western half of the three Pacific Coast states and the southern third of Arizona as a military area and stipulating that all persons of Japanese descent would eventually be removed therefrom.
- March 11 — General DeWitt established the Wartime Civil Control Administration (WCCA), with Col. Karl R. Bendetsen as Director, to carry out the evacuation program.
- March 18 — President Roosevelt signed Executive Order No. 9102 creating the War Relocation Authority to assist persons evacuated by the military under Executive Order No. 9066. Milton S. Eisenhower was named Director.
- March 21 — President Roosevelt signed Public Law 503 (77th Congress) making it a federal offense to violate any order issued by a designated military commander under authority of Executive Order No. 9066.
- March 22 — First large contingent of Japanese and Japanese Americans moved from Los Angeles to the Manzanar Assembly Center operated by the Army in the Owens Valley of California.
- March 23 — General DeWitt issued Civilian Exclusion Order No. 1 ordering the evacuation of all people of Japanese descent from Bainbridge Island in Puget Sound, and their removal by March 30, to the Puyallup Army Assembly Center near Seattle.





*Chronology*

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- March 27 — General DeWitt issued Proclamation No. 4 (effective March 29) forbidding further voluntary migration of Japanese and Japanese Americans from the West Coast military area.
- April 7 — Representatives of the governments of the ten Western states met at Salt Lake City with Director Milton S. Eisenhower of WRA and Colonel Bendetsen of WCCA to discuss resettlement plans for the evacuated people. The majority of the conferees registered uncompromising protest against unrestricted migration or resettlement within the western states. (This meeting is referred to as the Governors' Conference).
- May 8 — The first contingent of evacuees arrived at the Colorado River Relocation Center (Poston) near Parker, Arizona.
- May 21 — Group of 15 evacuees left from the Portland Army Assembly Center for seasonal agricultural work in Malheur County, Oregon, under civilian restriction order of the Western Defense Command.
- May 27 — First contingent of evacuees arrived at the Tule Lake Relocation Center in northern California.
- May 29 — "National Student Relocation Council" was established, with John Nason as chairman.
- June 1 — The Manzanar Army Assembly Center was transferred from WCCA to WRA and renamed Manzanar Relocation Center.
- June 2 — General DeWitt issued Public Proclamation No. 6 forbidding further voluntary migration of people of Japanese descent from the eastern half of California and simultaneously announced that all such people would eventually be removed from this area directly to WRA centers.
- June 17 — President Roosevelt appointed Dillon S. Myer to succeed Milton S. Eisenhower as director of WRA after Eisenhower's resignation to become Deputy Director of the Office of War Information.
- July 20 — WRA adopted its first leave policy which launched the relocation program outside of centers. On this same date the Gila River Relocation Center in Arizona received its first contingent of evacuees from the Turlock Army Assembly Center in California.
- August 7 — Western Defense Command announced the completion of evacuation of 110,000 from their homes in the military areas either to Army Assembly Centers or to WRA centers. The last of the residents of Japanese descent from eastern California were moved to relocation centers, even though most of them had already moved voluntarily from their homes near the West Coast to new homes farther inland.
- August 10 — Minidoka Relocation Center near Twin Falls, Idaho, received the first contingent of evacuees from the Puyallup Army Assembly Center.



SOME RECOLLECTIONS OF, AND REFLECTIONS ON, 1942

Mike M. Masaoka

It is difficult more than three decades after the fact and with the advantage of hindsight to try to accurately reconstruct what happened--and why--to more than 110,000 individuals of Japanese ancestry residing on the West Coast of the United States after the outbreak of World War II on December 7, 1941.

And yet, as the National Secretary and Field Executive of the Japanese American Citizens League (JACL) at that time and later, after service with the 442nd Regimental Combat Team in the European Theater, as the Washington JACL Representative for some 25 years, terminating on July 1, 1972, certain recollections remain quite vivid even today.

One is that probably more than any single person--in my judgment at least--Earl Warren influenced the Executive decision to authorize and carry out the mass military evacuation and exclusion of all persons of Japanese origin from all of California and the western halves of Arizona, Oregon, and Washington, without trial or hearing of any kind, at a time when all of our courts were functioning, early in 1942.

This remains my view today, even though Warren testified in San Francisco to the so-called Tolan Committee (Select House Committee on National Defense Migration) on February 21, 1942, two days after the President had signed Executive Order 9066 authorizing "any military areas" and to exclude therefrom "any and all persons".

To set the stage, it is to be recalled that immediately after the attack on Pearl Harbor and for several weeks thereafter, then-Attorney Gen-





eral of the United States Francis Biddle appealed for a distinction to be made between the so-called Japanese enemy and those of Japanese background residing in this country, calling for fair play and justice to those resident here.

For about a month, there was no serious demand for the mass evacuation of those of Japanese descent from the Pacific Slope. And the initial calls for evacuation were only for "aliens", and not native born citizens, even though alien Japanese could not become citizens of the United States through naturalization because of the prohibitions in federal statutes. Then, early in February, it seemed that an organized campaign was mounted by the pseudo patriots, the "yellow perilists" and the warmongers, and those who saw "profit" and economic gain for themselves in the total evacuation of all of Japanese race, without regard to citizenship, age, health, wealth, or reputation.

But, it was not until the likes of Earl Warren, a moderate and highly regarded lawyer, then the Attorney General of the State and a popular choice to be Governor of California in the 1942 election, urged the President, the War Department, and the Congress to conduct a mass evacuation of all of Japanese ancestry as "a measure of national security and military necessity" that the President and his associates accepted the recommendation, with the resulting Executive Order being issued on February 19, 1942.

In a lengthy prepared statement to the Tolan Committee, Warren submitted maps prepared by the various county district attorneys purporting to show that the Japanese owned, occupied, or controlled land adjacent to military installations, observing that such locations could not be "coincidence". He also identified alleged Japanese organizations, which included prefectural,



religious (Buddhist), cultural, educational, press, and even sports organizations, charging that they could engage in "widespread simultaneous campaign (s) of sabotage which could carry the most serious consequences". He claimed violations of the so-called alien land law and noted that the law enforcement officers of the state and the farm organizations favored the total removal of all Japanese.

In testimony to the Committee, Warren claimed that Japan had planned "fifth column activities, or sabotage, or war behind the lines upon civilians" for California. "For us to believe to the contrary is just not realistic," he said, adding that "Unfortunately, however, many of our people and some of our authorities and, I am afraid, many of our people in other parts of the country are of the opinion that because we have had no sabotage and no fifth column activities since the beginning of the war, that means that none have been planned for us. But I take the view that that is the most ominous sign in our whole situation. It convinces me more than perhaps any other factor that the sabotage that we are to get, the fifth column activities that we are to get, are timed just like Pearl Harbor was timed and just like the invasion of France, and of Denmark, and of Norway, and all of those other countries.

"I believe that we are being lulled into a false sense of security and that the only reason we haven't had a disaster in California is because it has been timed for a different date, and when that time comes if we don't do something about it, it is going to mean disaster both to California and to our Nation. When, nobody knows, of course, but we are approaching an invisible deadline."





Subsequently, Warren testified that "I want to say that the consensus of opinion among the law-enforcement officers of this State is that there is more potential danger among the group of Japanese who are born in this country than from the alien Japanese who were born in Japan. That might seem an anomaly to some people, but the fact is that, in the first place, there are twice as many of them. There are 33,000 aliens and there are 66,000 born in this country....

"While I do not cast a reflection on every Japanese who is born in this country--of course we will have loyal ones--I do say that the consensus of opinion is that taking the groups by and large, there is more potential danger to this State from this group that is born here than from the group that is born in Japan."

When Congressman Arnold of Illinois asked, "Do you have any way of knowing whether any one of this group is loyal to this country or loyal to Japan?", Warren responded, "Congressman, there is no way that we can establish that fact. We believe that when we are dealing with the Caucasian race we have methods that will test the loyalty of them, and we believe that we can, in dealing with Germans and Italians, arrive at some fairly sound conclusions because of our knowledge of the way they live in the community and have lived for many years. But when we deal with the Japanese, we are in an entirely different field and we cannot form any opinion that we believe to be sound. Their method of living, their language, make for this difficulty. Many of them who show you a birth certificate stating that they are born in this State, perhaps, or born in Honolulu, can hardly speak the English language because, although they were born here, when they were four or five years of age they were sent over to



Japan to be educated and they stayed over there through their adolescent period at least, and then they came back here thoroughly Japanese."

While we know that Warren testified in this vein to this Congressional committee after the President had issued the evacuation and exclusion order, at that time there were reports rampant that comments similar to his testimony and his prepared statement had been sent to members of the California delegation in the Congress, to the President, to the Secretary of War, and to the Attorney General of the United States, among others, in Washington.

In addition, Warren had expressed these same sentiments to newspaper and radio reporters, as well as to other public officials and civic leaders not only in California but elsewhere. Thus, others of reputation began to echo his explanations as if they were their own.

For instance, Walter Lippman, even then a revered columnist, wrote an article that is said to have made a great impression on many Washington officials. He repeated, and expanded on, the Warren theory that, since there had been no espionage or sabotage by the Japanese on the West Coast, this was a danger sign that those of Japanese ancestry were so well organized and disciplined that they were waiting for the invasion by the Japanese military before becoming active in planned sabotage activities.

In any event, from time to time, this recollection, that Earl Warren more than any other individual was responsible for the evacuation decision, has been confirmed. From some who were in the War Department, and others who were in the White House and in the Justice Department, at the time when the President was considering his decision on the subject, we have learned that what we suspected was fact.





Because the President and his civilian advisers were aware of the military's proclivities toward "over-reactions" in cases presumably involving "national security" and "military necessity", and because some of them suspected that during his tour of duty in the Philippines years earlier then-Commanding General of the Western Defense Command John L. DeWitt might have developed a "prejudice" against the Japanese, there was a tendency not to take the recommendations of the Army too seriously at first, especially since both Navy Intelligence and the Federal Bureau of Investigation (FBI) had informed the President that, in their judgments, total evacuation of the West Coast Japanese was not necessary for "security" reasons.

Moreover, there was this same tendency to discount the demands from West Coast members of Congress, public officials, and most others because of their backgrounds and motivations.

When the "reasoned and documented" recommendations of Earl Warren, however, reached the highest levels of government decision-making in Washington, much of the confusion and controversy ceased and the President made his reluctant decision to authorize the evacuation and exclusion of citizen and alien Japanese alike from their homes and associations on the Pacific Coast.

It may be said that perhaps Warren to this day is unaware of the decisive role which he played in the Presidential order. In any event, it may be noteworthy to this date that Warren has not explained the reasons for his war-time views on Japanese Americans. Many of the others who had significant roles at that time have expressed regret over their attitudes then and confessed that they misjudged the loyalty and allegiance of those of Japanese ancestry to the United States.



Be that as it may, some commentators on the Supreme Court of the United States have indicated their belief that the World War II experience of Earl Warren with the Japanese may have contributed to the leadership he gave as Chief Justice to cases involving individual liberties and civil rights that have justly designated his stewardship of the nation's highest tribunal as the Warren Court.

Mike M. Masaoka  
Former National Secretary and  
Washington Representative  
Japanese American Citizens League

10 August 1973  
Washington, D.C.





## INTERVIEWERS' INTRODUCTION

The two-volume study of the Japanese-American Relocation in the Earl Warren Project of the Regional Oral History Office, subtitled Decision and Exodus and The Internment, was designed to investigate the decision-making process in the civilian and military departments of the federal government that led to Executive Order 9066--the evacuation order--and the administrative process of carrying out that order.\* Earl Warren, then attorney general of the state of California, has been subjected to sustained criticism in varying degrees for his alleged advocacy of mass evacuation.

Some of our memoirists agree with Mike Masaoka's evaluation of Warren's role. Mr. Masaoka, who kindly agreed to write the introduction to these volumes, was for twenty-five years Washington advocate for the Japanese American Citizens League. He thinks that Warren's was the deciding voice which convinced President Roosevelt, over the advice of the Justice Department and the Office of Naval Intelligence, that the Army's Western Defense Command reports on the security needs of California and the nation should be accepted and the Japanese-Americans evacuated en masse.

Mr. Masaoka says, "[P]robably more than any single person--in my judgement at least--Earl Warren influenced the Executive decision to authorize and carry out the mass military evacuation and exclusion of all persons of Japanese origin from all of California...without trial or hearing of any kind, at a time when all of our courts were functioning, early in 1942.

"This remains my view today, even though Warren testified in San Francisco to the so-called Tolan Committee (Select Committee on National Defense Migration) on February 21, 1942, two days after the President had signed Executive Order 9066..." [Mike Masaoka, Introduction, p.vi]

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\*Executive Order 9066 was a federal order authorizing the Secretary of War and Military Commanders whom he might designate to prescribe military areas from which "any or all persons may be excluded." It nowhere mentioned Japanese or Japanese-Americans, but did lead directly to the exclusion of all persons of Japanese ancestry from the states of California, Oregon, and Washington. The War Relocation Authority was set up under Executive Order 9102 on March 18, 1942, and again, did not single out Japanese-Americans although they were the only ones who fell under its jurisdiction.



Dillon Myer, director of the War Relocation Authority, appraises Warren's role as less decisive. "[Earl Warren] was Attorney General during the period of the pressures for evacuation. He was, I think, part of the pressure."\* [Volume II, Dillon Myer, p. 8]

When these volumes were being discussed a much broader coverage of the subject was planned than we were able to execute. An obvious omission, much deplored by this office, is the absence of any Japanese-American memoirists. A short explanation of this is lack of funds. A longer explanation involves our obligation not to duplicate research already done at institutions such as the Japanese American Research Project at the University of California at Los Angeles and California State University at Fullerton.

Within these limits, the staff of the Regional Oral History Office then attempted to interview as many people as possible who had inside knowledge of the decision-making process which led to the evacuation order and who were concerned with the subsequent administration of camps set up under the War Relocation Authority.

The role of the United States Department of Justice in the decision-making process of defining and administering policy towards enemy aliens in general and Japanese-Americans in particular is described in Volume I, Decision and Exodus, in interviews with Edward Ennis, James Rowe, and Tom C. Clark. Repeatedly our memoirists expressed surprise and shock that the decision to move a whole racial group, citizen and non-citizen alike, was approved by President Roosevelt.

Mr. Ennis, a special assistant to the United States Attorney General in charge of war problems, became chief of the Justice Department's Alien Enemy Control Unit after the bombing of Pearl Harbor. He contrasts the development of the Justice Department's program of selective internment of enemy aliens with the Western Defense Command's vigorous advocacy of a policy of evacuation of all Japanese-Americans.

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\*For a contrary opinion see Jacobus tenBroek et al. who say, "California's attorney general in 1942, Earl Warren, has been charged by several writers with great if not crucial influence in promoting evacuation. However, an examination of the evidence fails to sustain the many allegations against him; and in particular there remains no proof that Warren ever publicly declared himself in favor of mass evacuation prior to mid-February." [p. 200.] Further, "It is a central contention of this book that the claim of "military necessity" was unjustified--but that the dereliction was one of folly, not of knavery." [p. 207-208.] Prejudice, War and the Constitution: Causes and Consequences of the Evacuation of the Japanese Americans in World War II. Jacobus tenBroek, Edward N. Barnhart and Floyd W. Matson (University of California Press, Berkeley and Los Angeles, 1970).





James Rowe was assistant to Attorney General Francis Biddle and was also concerned with enemy aliens. He notes that the Federal Bureau of Investigation, Navy Intelligence, Army Intelligence, and the Justice Department all opposed mass evacuation of Japanese-Americans because, in their opinions, such a move would be illegal, unnecessary, and counter-productive for the control of espionage and sabotage since it would disturb established intelligence patterns. According to Rowe, those pressing for evacuation were Colonel Karl R. Bendetsen--"[A]s mainly responsible for it as any man." [p. 9], and Assistant Secretary of War John J. McCloy. He concludes that when Earl Warren, then California's attorney general and a candidate for the office of governor in 1942, with the support of western agriculturalists and most of the West Coast congressmen, called for removal of all Japanese-Americans from the West Coast, Roosevelt was evidently persuaded that mass evacuation was in the national interest at a time when an allied defeat seemed possible at the hands of both Germany and Japan.

Tom Clark, assistant U.S. attorney general in the Anti-Trust Division, served as civilian coordinator between the Justice Department and Western Defense Command. He describes his work of acquainting the public with the situation, investigating allegations of Japanese sabotage, and enforcing General DeWitt's curfew orders.

Our attempt to document the military point of view was only partially successful. Herbert Wenig, a deputy attorney general in the California Attorney General's office who spent the war years in the Judge Advocate General Corps as a legal assistant to General DeWitt, discusses the possible use of martial law in wartime, the development of a constitutional argument for relocation, the enforcement of the curfew laws, and the Mirobayashi, Korematsu, and Endo cases. However, a key figure who favored evacuation of all Japanese-Americans from the West Coast, Colonel Karl R. Bendetsen, assistant to General DeWitt, declined the invitation to be interviewed and referred researchers to the army records. A fuller account of his refusal appears in the interview history of the Edward Ennis memoir.\*

Volume II, The Internment, contains memoirs by Robert Cozzens, Dillon Myer, and Ruth Kingman. It is enhanced by two pages of reproductions of Hisako Hibi's paintings of Tanforan Assembly Center and Topaz Relocation Center.

Robert Cozzens served as assistant national director of the War Relocation Authority in San Francisco for the life of the agency. He was actively involved in selection of sites for camps, their day-to-day

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\*Further information about the efforts of the Western Defense Command and the Fourth Army to strengthen the security of the West Coast, and additional comment on the Japanese-American relocation from a military perspective, can be found in Victor Hansen, "Passive Defense During World War II; The California Gubernatorial Campaign of 1950," Regional Oral History Office, The Bancroft Library, University of California, Berkeley. In process.



administration, and served as acting director of Gila Relocation Center in Arizona. He comments on the successful campaign of commercial growers to abort the agricultural programs established at some centers. T.E. "Pat" Frayne, the War Relocation Authority's public relations officer, joined Mr. Cozzens for one interview and contributed much on publicity problems and the work of WRA in trying to smooth the way for Japanese-Americans returning to California towards the end of the war. Frayne comments on the change in Governor Warren's attitude to Japanese-Americans when the U.S. Supreme Court ruled that "[T]hese American concentration camps were unconstitutional...He said to Bob Cozzens, 'Well, I knew it was unconstitutional all the time.'" [p. 60]

Dillon Myer was director of the War Relocation Authority from June 17, 1942, until the program was officially terminated on June 30, 1946. He succeeded Milton Eisenhower who served from the creation of the agency in March until June, 1942. In his memoir, Myer discusses the problems of the War Relocation Authority primarily from the perspective of Washington. It is a valuable informal addition to Mr. Myer's book, Uprooted Americans\*, (the uncut manuscript version is in The Bancroft Library) and to his earlier autobiographical memoir.\*\*

Ruth Kingman was executive secretary of the Pacific Coast Committee on American Principles and Fair Play--usually referred to as the Fair Play Committee. This was a group of prominent Californians who organized in the middle of 1941 to act as a counter-pressure group to various anti-Japanese hate groups. Once the evacuation policy had been announced, the Fair Play Committee worked actively to humanize the effects of it as much as possible. Mrs. Kingman worked full time to try to change public opinion; she visited relocation centers and traveled throughout the United States on behalf of the constitutional rights of Japanese-Americans. In addition to her account of the Fair Play Committee here, she contributed to her husband Harry Kingman's memoir which was prepared by this office.\*\*\*

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\*Myer, Dillon S., Uprooted Americans: The Japanese Americans and the War Relocation Authority During World War II. (University of Arizona Press, Tucson, 1971).

\*\*Myer, Dillon S., "An Autobiography of Dillon S. Myer," transcript of a tape-recorded interview conducted by Helen S. Pryor in Washington, D.C., 1970, 409 pp. (In The Bancroft Library).

\*\*\*Kingman, Harry L., "Citizenship in a Democracy," typed transcript of a tape-recorded interview conducted by Rosemary Levenson, Regional Oral History Office, The Bancroft Library, University of California at Berkeley.





Mrs. Hisako Hibi kindly allowed us to use reproductions of twelve of her oils depicting Tanforan race track, where the stables were roughly converted into barracks to house an assembly center, and Topaz Relocation Center in central Utah. Mrs. Hibi, her husband the distinguished artist Matsusaburo (George) Hibi, and their two small daughters spent the war at Topaz where the Hibis ran arts and crafts schools for adults and children. The original canvasses range in size from sixteen by twenty inches to twenty by twenty-six inches. Mrs. Hibi has kindly donated many of the materials from those days to the Japanese American Research Project at UCLA, The Bancroft Library, and The Oakland Museum, History Department. Her curriculum vitae can be found with the reproductions in Volume II.

One final interview which should be noted is bound as an appendix to Volume II. Lila Andrews Wilson was interviewed by her son Joe Wilson in 1968. During World War II she was serving on the national board of the Young Women's Christian Association. She was asked by the executive board to look into the relocation of Japanese-Americans at Minidoka Relocation Center in Idaho, which she then visited for a week in 1943. She comments on the strict rationing of food and heat. Her statement that the Japanese Red Cross sent food parcels to American camps is contradicted by Robert Cozzens. However, in a recent book by Shizuye Takashima on Canadian camps for Japanese-Canadians, there is a reference to food parcels from Japan.\*

The subject of the Japanese-American evacuation is also discussed in Warren Project interviews appearing in other volumes. Extensive descriptions of the role of the California attorney general's office under Earl Warren in the evacuation appear in separately bound interviews with Warren Olney III, deputy attorney general in charge of the criminal division; Oscar Jahnsen, then the office's chief special agent; and Percy Heckendorf, district attorney of Santa Barbara County.

The anti-Japanese hysteria that whipped California is described in interviews with Merrell F. Small, a newspaper editor, and Richard Graves, who was head of the California civil defense. Mr. Graves also details the conflicts between civilian defense efforts and the military. Problems surrounding the return of the Japanese to California are discussed in an interview with Robert B. Powers, formerly chief of police of Bakersfield, California. Briefer treatment of aspects of Japanese-American relocation may be found by referring to the index heading of "Japanese" or "Japanese-American relocation" in other Warren Project interviews.

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\*Takashima, Shizuye, A Child in Prison Camp. (Tundra Books of Northern New York, Plattsburg, 1971).



Further material on Japanese-Americans can be found in the Regional Oral History Office's interview with Helen Valeska Bary. She was a distinguished public servant who worked mainly in the fields of labor administration and social security in both state (California) and federal positions. In chapter XII of her interview, she describes her early experiences with Japanese farm laborers in the San Fernando Valley. By 1907, she noted that a favorable attitude was changing to increasing fear and envy as immigration from Japan increased, schools were set up, "picture brides" started to arrive, and the Japanese began successfully farming their own land. In 1941, she was assistant regional director for the Federal Security Agency. According to her information through Regional Director Richard Neustadt, Colonel Bendetsen was at first unwilling to go along with the idea of wholesale evacuation. In 1945, when Japanese-Americans started coming back to California, the FSA in cooperation with private agencies, tried to help individuals to make smooth transitions from camps to the outside world.

The Bancroft Library has an outstanding collection of material on the Japanese-American relocation and related subjects. The library holds duplicates of all War Relocation Authority papers, and all records of the University of California's Japanese American Evacuation and Resettlement Study. The latter collection includes diaries, casebooks and unpublished studies. A descriptive listing of this material can be found in Japanese American Evacuation and Resettlement: Catalog of Material in the General Library by Edward N. Barnhart (University of California, General Library, 1958). The complete files of the Fair Play Committee (Pacific Coast Committee on American Principles and Fair Play) are also held in the library and include a comprehensive file of newspaper clippings from West Coast publications. The papers of Senator Hiram W. Johnson have information on alien land laws and the problems of oriental immigration. Senator James D. Phelan's records document the anti-Japanese feelings in the '20s. The papers of Robert W. Kenny, who succeeded Earl Warren as attorney general in 1943, have information on law enforcement questions in the aftermath of the relocation.

The History Department of The Oakland Museum has three major collections on the history of the Japanese in California and the United States. From the Relocation period, there are objects made and used by Japanese-Americans in the Relocation Centers along with government announcements to people of Japanese ancestry. The museum holds, and is preparing for exhibition, a folding village from Japan which toured the major cities in the United States from 1885-1886 accompanied by Japanese craftsmen. It was called "The Great Exhibition of Japan (Dai Nippon Hakuraukai)" and was sponsored by the Deakin Brothers of Yokohama and San Francisco. The Museum also holds portions of the Japanese sericulture exhibition and other exhibits from the 1915 Panama-Pacific Exposition in San Francisco.





The library of the California Historical Society in San Francisco holds various collections of papers and an official compilation of military orders, notices, and directives concerning the relocation of Japanese-Americans promulgated in the name of the commanding officer of the 4th Army at the Presidio. Dr. Joseph R. Goodman's papers include the records of the Japanese American Citizens League, San Francisco chapter, January-June 1942 and personal letters, publications and government directives from both the assembly centers and relocation camps, particularly Topaz where Dr. Goodman taught high school.

The Japanese American Research Project at the University of California at Los Angeles was started in 1962 with an initial grant of \$100,000 from the Japanese American Citizens League to fund a study of the contribution of Japanese-Americans to America, and particularly to honor the Issei (first) generation of settlers. Their research staff conducted about 280 taped interviews for the historical aspects of the study. Additional funding from the National Institute of Mental Health and the Carnegie Institute led to a large three generation sociological study. The staff of the UCLA project was most cooperative and gave us permission to copy ten of their tapes selected by the Regional Oral History Office to complement our study. Interviews with Roger Baldwin, Francis Biddle, Gordon K. Hirabayashi, Clark H. Kawakami, Saburo Kido, Mike M. Masaoka, Katsuma Mukaeda, Dillon S. Myer, Masao W. Satow, and Dr. Newton K. Wesley\* were conducted by Joe Masaoka and Robert Wilson and may be listened to in The Bancroft Library. In addition to their large tape collection, the UCLA project has a splendid collection of papers, newspapers, pictures and other materials relating to Japanese-Americans and Japanese relations with America. Publications are expected shortly.

The Oral History Program at California State University, Fullerton, has about fifty interviews in their ongoing Japanese American Project. Thirty-five of these interviews are transcribed. Interviewees are predominantly Japanese-American; the subjects discussed range from experiences of the Nisei (second generation) in World War II to a Quaker who devoted the wartime years to serving Japanese-Americans in the Justice Department and relocation camps.\*\*

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\*"Born Uyesugi, Wesley changed his name legally when his patients complained they couldn't find him in the directory under the W's." Bill Hosokawa, Nisei: The Quiet Americans. (New York, Morrow, 1969). [p. 485]

\*\*For a full listing see "A Guide for Oral History Programs" edited by Richard D. Curtiss, Gary L. Shumway and Shirley E. Stephenson, 1973. Available from the Oral History Program, California State University, Fullerton.



An outstanding bibliography was prepared by the junior members of the Japanese American Citizens League in 1969. It was reprinted in the Pacific Citizen, holiday issue, December 18-25, section D, 1970, and was compiled from the libraries of the University of California, Berkeley, California State Universities at Hayward, Sacramento, and San Jose, Chabot College, Monterey, Monterey Peninsula Library, Sacramento City and San Jose Colleges, the University of Santa Clara, Stanford University, and the public library in Stockton. Additional material can be found in the University of Washington library in Seattle.

There was a long period of oblivion and neglect by the public on the subject of the Japanese-American Relocation after World War II. This has changed significantly in recent years, and many books, academic, general, and fictional are now being published. An outstanding photographic exhibition, Executive Order 9066, which was prepared by the California Historical Society, aroused great public interest when it was shown in the Bay Area in February, 1972, at the M.H. de Young Memorial Museum, San Francisco, and the University Art Museum in Berkeley during its lengthy nationwide tour.

The staff of the Regional Oral History Office would like to acknowledge the generous help given by our advisors. Mr. Dillon Myer, director of the War Relocation Authority and one of our memoirists, patiently served ROHO in providing introductions, assisting as interviewer, helping with funding, and acting as catalyst where needed. Officers of the Japanese American Citizens League were unfailingly helpful and courteous. Mr. Masao W. Satow, then national director of the JACL gave generously of his time. Mr. Mike Masaoka, for years Washington advocate for the JACL, was a continual support and most promptly agreed to write the introduction to these volumes for which we are very grateful. Mr. Bill Hosokawa, assistant editor of the Denver Post and author of Nisei: The Quiet Americans gave an hour of his time at the San Francisco airport between planes. Advice and help also came from many others whom we thank for their good counsel.

Rosemary Levenson  
Interviewer-Editor

Amelia Fry  
Interviewer-Editor

Miriam Feingold  
Interviewer-Editor

9 April 1974  
Regional Oral History Office  
486 The Bancroft Library  
University of California at Berkeley





CHRONOLOGY OF EARL WARREN AND THE JAPANESE EVACUATION

1942

- January 30      Earl Warren in an Associated Press release: *"I have come to the conclusion that the Japanese situation as it exists in this state today, may well be the Achilles heel of the entire civilian defense effort. Unless something is done it may bring about a repetition of Pearl Harbor."*
- February 2      Conference of sheriffs and district attorneys called by Earl Warren on subject of alien land law enforcement. Sheriffs and D.A.s agreed to draw up maps showing location of Japanese holdings.
- February 7      Earl Warren declares unconstitutional a state personnel board order barring from civil service positions all citizens who were "descendants" of alien enemies.
- February 7      Earl Warren at California Joint Immigration Committee: *"What we need now...is action, and I think we ought to urge the military command in this area to do the things that are obviously essential to the security of this State."*
- February 12      Walter Lippmann's column, "The Fifth Column on the Coast."
- February 16      Westbrook Pegler's column supporting Lippmann.
- February 19      Executive Order No. 9066
- February 21      Earl Warren testifies before Tolan Committee (House Committee on Interstate Migration): Stresses danger of Japanese; little danger from Germans and Italians. Fear of vigilantism if government didn't step in. No information about sabotage ever received from Japanese. Evidence from maps. Removal of Japanese wouldn't upset agriculture.



UNITED STATES OF AMERICA  
GENERAL SERVICES ADMINISTRATION

Region 9  
49 Fourth Street  
San Francisco, California 94103



30 November 1971

Mrs. Amelia Fry, Director  
Earl Warren Oral History Project  
Regional Oral History Office  
Bancroft Library  
Berkeley, California

Dear Chita:

The records of the Modern Military Branch of the National Archives and Records Service have provided the following information concerning the incident recalled by Chief Justice Warren:

On the night of December 22-23, 1941, the Monte Bello, an oil tanker, was sunk by torpedo off of San Luis Obispo. This incident is recorded in Record Group 80, the Records of the Secretary of the Navy, General Correspondence 1940-1942, File QS 1/L11-1, Document number 411222.

Coast Guard records documented the sinking of two other ships in December:

December 24, 1941 - Abbaroka was sunk in the same general area as the Monte Bello.

December 21, 1941 - Emidio was sunk "off San Diego."

Peter N. Laugesen, an archivist in the Modern Military Branch, might be able to supply additional specific information

RADM John W. Greenslade was Commandant of the Twelfth Naval District, San Francisco, at the time of these incidents. He is, almost certainly, the person the then Attorney General of California contacted regarding this occurrence.

I am delighted that NARS records were useful in this case. Let me know if we can be of additional assistance.

Best regards,

ANN M. CAMPBELL  
National Archives and Records Service







*Exhibition Designed by*  
**Maisie & Richard Conrat**

Exhibition prints were made by General Graphic Services of San Francisco from War Relocation Authority negatives provided by The National Archives and Records Service.

# EXECUTIVE ORDER 9066

*An Exhibition Produced by the*

## CALIFORNIA HISTORICAL SOCIETY

The days following the Japanese attack on Pearl Harbor were dark days of the American spirit. Unable to strike back effectively against the Japanese Empire, Americans in the Western states lashed out at fellow citizens and resident aliens of Japanese ancestry. Executive Order 9066, signed by President Roosevelt on February 19, 1942, was the instrument that allowed military commanders to designate areas "from which any or all persons may be excluded." Under this order all Japanese and Americans of Japanese ancestry were removed from Western coastal regions to guarded camps in the interior.

**Executive Order 9066** is an image distilled by Maisie and Richard Conrat from some 25,000 photographs of the experience of 110,000 American Japanese. About one-third of the photographs in this exhibition were made by the great Western photographer Dorothea Lange.

# OPENS JAN. 5

TO FEB. 20 AT  
**M.H. de Young  
Memorial Museum**  
SAN FRANCISCO

10 am-5 pm daily

TO FEB. 13 AT  
**University  
Art Museum**  
BERKELEY

11 am-5 pm Wednesday-Sunday

*Panel 1 — DOROTHEA LANGE, WRA, Hayward, Calif., May 8, 1942: Evacuation day.*

*Panel 3 — DOROTHEA LANGE, WRA, Manzanar, Calif., July 3, 1942: Young man at Manzanar Relocation Center. His Caucasian wife is living with him in the camp, together with their small child.*

*Panel 5 — DOROTHEA LANGE, WRA, Manzanar, Calif., July 2, 1942.*

*Panel 6 — PHOTOGRAPHER UNKNOWN, from Yusen Kawashima, Kariforunia Kaika Ibun (Tokyo, 1932): California farmer near Lemoore, Kings Co., c. 1920.*

*Panel 7 — PHOTOGRAPHER UNKNOWN, from R. Suzuki, The Development of the Inter-Mountain Japanese Colonies (Denver, n.d.): A secretary from the Japanese Embassy (seated with white hat) together with members of the Japanese community in Cheyenne, Wyoming, c. 1915.*



*Panel 8 — PHOTOGRAPHER UNKNOWN, from "Prominent Americans Interested in Japan and Prominent Japanese in America", Japanese in California (San Francisco, 1903).*

*Panel 9 — PHOTOGRAPHER UNKNOWN, from Yusen Kawashima, History of the Settling of California (Tokyo, 1932): California berry farmer, c. 1925.*

*Panel 10 — PHOTOGRAPHER UNKNOWN, from Sydney Gulick, The American Japanese Problem (New York, 1914): "The mother and son... are pure Japanese. The mother came as a young girl to California, where the son was born."*





The Bancroft Library

University of California/Berkeley  
Regional Oral History Office

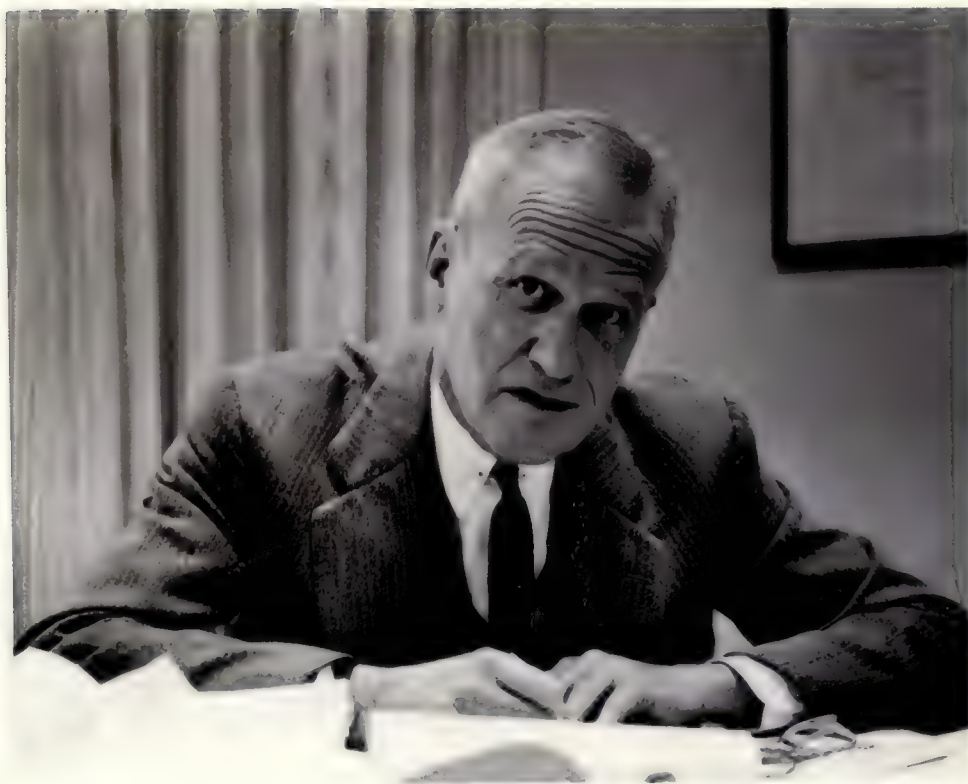
Earl Warren Oral History Project

James H. Rowe

THE JAPANESE EVACUATION DECISION

An Interview Conducted by  
Amelia Fry  
and  
Dillon Meyer





James H. Rowe





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## INTERVIEW HISTORY

Date of Interview: 1 March 1971

Place of Interview: James Rowe's office in the law firm of Corcoran, Foley, Youngman & Rowe, Washington, D.C.

Those Present: James H. Rowe, Dillon S. Myer, and Amelia R. Fry

From December, 1939, to August, 1943, James Rowe, an ardent civil libertarian, was assistant to the Attorney General in the Department of Justice and one who had to wrestle with wartime policy for enemy aliens. For the Japanese, it grew to include the Japanese-American citizens, and under pressures from several sides, eventual evacuation to the detention camps.

At first the working title for this transcript was the rather unwieldy, "The Struggle to Avoid Evacuation: A Commentary on Grodzins' Americans Betrayed,"\* but the discussion herein covers broader ground, and the simpler title was substituted.

It was Dillon Myer who helped set up the date for the interview with this busy Washington attorney. Mr. Myer, former head of the War Relocation Authority, had also contributed an interview on the subject and remained a friend and advisor to this office for its subsequent work. He agreed to come along for the session with Mr. Rowe, in which he proved to be both interviewer and interviewee.

Mr. Rowe had reviewed Grodzins' book the night before, as had we, and as soon as the tape recorder was plugged in, we plunged in. He was candid and conscientious in his effort to interpret the difficult period as he saw it from the upper echelon of the Justice Department. The crush of his schedule gave us only an hour, but after December of 1973, when he received the transcript to check, he added further information. In fact, we had sent more than sixty questions relating to specific meanings, overlaid conversation, and needed interpolations. He complied, adding his own and noting in a cover letter of 7 January 1974, "I have corrected that transcription at great length, and in what is probably illiterate pencil scratching. I hope it is translatable. I did not rewrite my views to any extent, but tried to fill in the considerable gaps and holes of the oral history, in an effort to make sense."

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\*Grodzins, Morton, Americans Betrayed, Politics and the Japanese Evacuation, University of Chicago Press, Chicago, 1949. Relevant passages have been inserted in the transcript where needed for clarity of the discussion.





He is a person whose strong convictions create emphatic cadences and vivid diction when he speaks. He seemed to function less on the detached propriety one expects from the Washington successful, than on a resolute style securely based on his belief that the story should be preserved for history. Telephone calls were barred from his office and we three, sitting on the soft, comfortable couch and chairs, could concentrate on those days in 1942 without interruption.

Amelia R. Fry  
Interviewer-Editor

3 March 1976  
Regional Oral History Office  
486 The Bancroft Library  
University of California at Berkeley



PERSONS PRO, PERSONS CON  
(Date of Interview: March 1, 1971)

Attorney General Biddle

Rowe: I re-read some of the Grodzins\* book last night, and most of the things he says I agree with, and I just think he says them a lot better.

Fry: Well, the topics I have in mind more or less supplement what Grodzins says. But I want to turn it over here to our expert who was there on the scene. [Dillon Myer, head of War Relocation Authority 1942-46.]

Myer: I have a couple of questions that I've been interested in a long time, Jim. One came up while I was writing my book. (By the way, my book is going to be published in the middle of March. I've interested the publishers; it's called Uprooted Americans.\*\*\*) So I went into Grodzins very thoroughly and some of the others. One of the questions that's always kind of interested me was, How did it happen that Joseph L. Rauh and Oscar Cox, and--who else was it?

Rowe: Ben Cohen.

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\*Morton Grodzins, Americans Betrayed, Politics and the Japanese Evacuation (Chicago: University of Chicago Press, 1949).

\*\*Dillon S. Myer, Uprooted Americans: The Japanese Americans and the War Relocation Authority during World War II (Tucson: University of Arizona Press, 1971).





Myer: Ben Cohen wrote this memorandum\* when they weren't even in the Justice Department?

Rowe: It wasn't any of their damned business and they just volunteered.

Myer: This is funny to me, knowing Rauh today.

Rowe: I think probably it was Oscar Cox--I think it was probably his [Cox's] idea; Oscar was all over the lot. He was not in the Justice Department; he came in later.

Myer: Yes, I know he was in later.

Rowe: And he had been general counsel, I think, in Lend Lease. Rauh worked for him. Oscar was a very ambitious man.

I think he was just on the wrong team. He realized we weren't moving the Japanese and didn't intend to move them. It was none of their damned business, frankly. I've been giving them hell ever since. Ben's defense is that he didn't say it was a wise or unwise thing, that they were waiting on the legality, and later on the Supreme Court backed them.

It was still none of their damned business.

Myer: That's right.

Rowe: We in Justice wouldn't write an opinion, and we just said to hell with theirs.

Fry: Now this was on the legality of the evacuation of--

Rowe: By the military.

Fry: Japanese-American citizens, not just the aliens. And if I remember what I read, this was the memo that showed ways in

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\*Memorandum given to the Attorney General, Biddle, by a team of government lawyers, undated, probably near February 10, 1942. It supplied legal doctrine for a citizen group to be treated en masse: "So long as a classification of persons or citizens is reasonably related to a genuine war need and does not under the guise of national defense discriminate against any class of citizens for a purpose unrelated to the national defense, no constitutional guaranty is infringed." -- Grodzins, op. cit. p. 257.



Fry: which they felt that it could be constitutionally accomplished by doing it militarily--

Rowe: I think it supported what the military wanted to do: it was the Walter Lippmann idea. Just move everybody out, and if you had to get back in, you had to get a pass.

Myer: Yes, you can get it out of Grodzins' book because it covers it quite well.

Fry: That's right.

Myer: It's very difficult for me, after reading Grodzins and lots of other people, and knowing [Attorney General Francis] Biddle as well as I did later to guess whether he agreed with you boys. He didn't say.

Rowe: Most of the way.

Myer: Yes, I thought he must have.

Rowe: Frankly, he just folded under, I think.

### The President

Rowe: I don't really know what happened with President Roosevelt, you know. (I'd been quarreling with Tom Clark somewhat on this.)

Myer: That's a good question.

Rowe: I don't think Roosevelt paid much attention to this thing at all. I think somebody got over there at the White House and he said well it's war and after all you had a couple of British ships just sunk at Singapore. The entire atmosphere was--one of tension, of crisis and Roosevelt was concentrating on the war in these gloomy months. The Japanese evacuation question must have been a fringe matter for him in those weeks just following Pearl Harbor.

Myer: I think the Chief, Roosevelt, was a bit biased, too. He loved the Chinese. Eleanor Roosevelt told me this. She made a trip down to Gila, Arizona, and I rode back with her to Phoenix and we had quite a talk. And I asked her what the President's feelings were about this whole thing. She said, "I really don't



Myer: know." She said, "I know he doesn't feel about the Japanese the way he felt about the Chinese." And I think he probably was pretty irked, pretty upset by the whole thing by this time, and he just kind of wiped it off. I wondered about Biddle because--

Rowe: Biddle was pretty stiff-necked. His whole background--he was an American Civil Liberties Union lawyer all his life. He was very tough, until just about the end. I think the meeting we had at his house, I still think he must have been told that day or the day before that the President had made up his mind, and he followed Presidential orders. Oddly, I never asked him, that I can now recall, in all the later years when we were very close friends. I think FDR told Biddle to move the Japanese. But [Assistant Secretary of War] McCloy, according to Kahn (you see I'm relying on the books too), according to Kahn, McCloy and Stimson had talked to Roosevelt, and we weren't in on it.

Myer: And you weren't in on it?

Rowe: No. Which we should have been. We should have made sure we were heard at the White House. Our fight should have been at the White House level. We made a lot of mistakes.

Myer: Well, I didn't think you made too many, Jim.

#### Members of Congress

Rowe: The atmosphere was bad. Another thing that has always bothered me was, well, a friend like [California Congressman] Jerry Voorhis. He finally switched, but he didn't stand up to that civilized state of yours--California.

Myer: He sat on his hands through most of the period.

Rowe: And [U.S. Senator] Sheridan Downey,\* for some damned reason, was

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\*Downey, the only member of Congress in the Pacific Coast delegation that Ennis and Rowe could persuade to make a speech indicating "confidence in Justice Department action and urging moderation." -- Grodzins, op. cit., p. 254.





- Rowe: the one man from California that stood up for the Japanese-American citizens and tried to help them and the Justice Department. And what's his name--
- Myer: Chet Holifield?
- Rowe: I can't remember what Chet did.
- Myer: Well, I can tell you: he gave us support all the way through and he was my key adviser on the hill. All the way through. I'm going up to see him pretty soon and give him my book.
- Rowe: I don't remember Chet as giving us any help.\* The only other fellow that I remember was [Harry P.] Cain, who was later a Senator from Washington.
- Fry: Harry Cain?
- Rowe: He was mayor of Tacoma at the time.
- Myer: He was the S.O.B. who tried to block me from being commissioner of housing.
- Rowe: Did he? [Laughter]
- Myer: Oh yes. He went on the floor and made a big speech. But he had been a liberal mayor of Tacoma.
- Rowe: And since he got out of the Senate he has been a good liberal in Florida. His real trouble in the Senate was booze, you know. He got on liquor.
- Myer: From what I understand.
- Rowe: He was six years in the Senate. I now see him occasionally. He is a good man. He is a great supporter of [President Lyndon] Johnson, although a Republican in Florida. And he got off liquor and got back to being sort of a good liberal.
- Myer: Well, good.
- Rowe: What the relation is between alcoholism and non-liberalism, [laughter] I don't know.

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\*Chet Holifield did not become a member of Congress until November, 1942.



Myer: I've always kinda felt that maybe I was complimented by his opposition because he and Joe McCarthy were in the Senate, and both were against [laughter] me in committee and spoke against me on the floor. So I said, that's all right, I have no objection to that!

I have a comment and then a question. Biddle, as I remember it, simply said at the end, that if there is to be an evacuation, the military will have to handle it because the Justice Department was in no position to handle these crowds. This sounded to me [laughter] like the way Tom Clark had been talking all the way through.

#### PERCEPTIONS AND ASSUMPTIONS

##### The Army Wouldn't Want It

Rowe: Well, frankly this was our chief mistake. (I noticed I said this in Grodzins' book, at the end.\*) We were somewhat naive. I assumed a department planning a war, an army planning a war, would be too damn busy to horse around with this kind of thing, evacuation. I learned since World War II there was a great deal more sense to it as an army task. [Laughter]

Myer: We learned a lot of things. [Laughter]

Rowe: Even the Pentagon today, they've got so much manpower they can do anything. And this is the mistake we made. We kept saying that we won't do it and haven't got the authority to do it. And there are enough precedents, you know with Lincoln suspending the writ of habeas corpus, that if the military wanted to do it, they could do it. But we frankly never thought they would. We thought they were too damn busy getting the troops to go fight a war some place else. That was our mistake.

It was definite policy that, one, we wouldn't do it, and two, we couldn't do it. Maybe we should have stuck to one, and said we wouldn't do it. The pressures on "wouldn't do it"

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\*Grodzins, op. cit., pp. 269-70. See p. 13A.





Rowe: were terribly high. You know we had the great Walter Lippmann\* and, if I may say so (he says rather ironically and bitterly) the great civil liberties Chief Justice of the United States [Earl Warren]. But of course Lippmann has been wrong most of his life anyway. Warren was running for office in California. He was then, if I remember correctly, state attorney general and wanted to be governor. And he did become governor.

Myer: That's right, and the American Legion had been his great supporter.

### Hysteria

Rowe: That's right. I think there was an awful lot of hysterics about this thing. I know there was. I was out in California in January, 1942, and you could see the hysteria growing.

Myer: Oh, sure.

Rowe: I remember a blackout one night in January in San Francisco and it took half an hour to get the lights off, and everybody decided that was a sign of deliberate sabotage.

Myer: Scared to death.

Rowe: And the Japanese were shelling--we got a report that a submarine had been shelling at Goleta [February 23, 1942]. We've got to remember, Dillon, what we didn't know, I didn't know, and I assume only the aviation people knew. We didn't know how many bombers the Japanese had and whether they were coming over to bomb us; or whether the Germans could, because they had these long flight bombers.

Myer: That's right.

Rowe: We had a couple of alerts here in Washington, practice alerts or false alarms. We should have known the Japanese and the Germans had no bombers which could reach us but at that stage we were

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\*Walter Lippmann's column of February 12, 1942, urged evacuation.



Rowe: all innocents, except for a few busy military aviation professionals. How did we know? Generally this was a hysterical business. The thoughts and motives... But it was a pretty damn clear picture underneath that this evacuation was not necessary. Anybody who looked at all the pieces of paper, never had any problems seeing that.

Myer: That's right.

### Not Necessary

Rowe: I've got to give our friend J. Edgar Hoover the credit. He stood right up, read his own memorandum and said, "This evacuation isn't necessary; I've already got all the bad boys."

Myer: Well, Phil Glick and I came over to talk with Biddle and said we'd like to see Hoover. He said okay and called him, and we went over to see him and we asked him about it, and right off the bat he said not only it wasn't necessary, but it broke up our intelligence pattern.

Rowe: That's right.

Myer: He didn't like it at all.

Rowe: The Navy intelligence was saying the same thing.

Myer: That's right.

Rowe: Well, it was just that [General] DeWitt couldn't take the heat, and McCloy couldn't, and this fellow [Colonel Karl R.] Bendetsen was a bad, bad fellow.

### THE WAR DEPARTMENT LEADERS

Myer: That's my next question.

Fry: What about--

Myer: Let me ask this on Bendetsen. This is one I've been wanting to ask for a long time. There's a guy by the name of Allan



Myer: Bosworth--who wrote the book called America's Concentration Camps\*--who claims that Bendetsen had nothing to do with the evacuation. I think he was wrong.

Rowe: I think Bendetsen was as mainly responsible for it as any man.

Myer: That's been my position.

Rowe: That's been my position all my life.

Myer: Absolutely.

Rowe: A very able fellow.

Myer: Oh, he's able and he's a smart boy and he has good charm if he wanted to turn it on, and he charmed this author because he had an interview with him, and he charmed him right out of saying he had anything to do with it.

Rowe: Well, McCloy was the other one.

I've always taken the view, and I think I probably still should, that this was something reasonable men could differ about. It seemed to me clear that they were wrong. But you get down to little innocent me, and Biddle sort of wobbling, and you begin to wonder a little yourself. [Laughter]

Fry: There was a Major General Allen W. Gullion, and there's one book about to come out, I think, that kind of places him in the seat of the blame.

Rowe: Gullion--his son is a friend of mine, the dean of the Fletcher School of Diplomacy up in Boston, and had been a foreign service officer, a very bright fellow. I hope he never hears this--but I never thought his father was very smart. I mean, as far as comparing him with a man like Bendetsen. He wasn't even in the major leagues.

He's a nice man; I can remember he was saying during one discussion we had somewhere during this period on Christmas or

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\*Bosworth, Allan P., America's Concentration Camps (New York: W.W. Norton & Co., 1967).





Rowe: New Year's Eve, he was going to go to sleep in his office because the holiday was when they always attack. This kind of thing. He was a conscientious man.

But he didn't have very much to say about the evacuation decision. Assistant Secretary John J. McCloy and Bendetsen are the men who really did this.

Myer: I think so.

Rowe: Have you talked to McCloy? It would be very interesting.

Fry: No, I'd like to.

Rowe: He's up in New York, still practicing law.

Myer: I think you'd find it very interesting. He was in on all the military decisions at that time.

Rowe: He was the man who ran it. I had forgotten how old [Secretary of War, Henry L.] Stimson was then, Stimson was a very great man, but he functioned only four or five hours a day, and the two people who advised him were [Undersecretary of War, Robert] Patterson and McCloy. Jack [McCloy] must have been in his early forties. Two very able lawyers. Patterson was a real go-to-hell military fellow, a very talented lawyer, but he spent his life being one of those Plattsburg type reserve officers from World War I. And he was hard-boiled.

#### THE CAPITULATION MEETING, FEBRUARY 17, 1942

Rowe: The last meeting we had was with Stimson, Patterson and McCloy, and Biddle, Ennis, and myself. Stimson, you've got to remember, was a great man, and he created by his mere presence the atmosphere of the great old man who had come back once again to help his country. This affected Biddle strongly. I think Biddle makes this point in his own memoirs. He did defer to Stimson, as most of us did. But Ed Ennis went right after the great Stimson that morning. It was the last of the business, and I remember, you know, thinking "Fine, Ed, argue with Stimson."

Stimson looked down his nose and said, "Mr. Ennis, we've just got to assume in this room that we're all men of goodwill."



ary 17. In addition to the Attorney-General, those who attended were Mr. Clark; James Rowe, Jr., the assistant to the Attorney-General; Edward Ennis, chief of the Alien Enemy Control Unit; Colonel Bendetsen, representing General DeWitt; Major General Allen W. Gullion, Provost Marshal General; and John J. McCloy, the Assistant Secretary of War. The total alien enemy control program was up for scrutiny, but Mr. Rowe and Mr. Ennis, at least, did not even know that the War Department was ready to demand evacuation for citizens of Japanese ancestry. The first point at issue was the evacuation of alien enemies from large areas, which the Attorney-General (in his letter of February 9) had refused to undertake. Rowe and Ennis stubbornly held to their position: evacuation of alien enemies from such large areas would create misery and hardship. There had been no demonstration of the necessity for such a move. The Justice Department was unequipped to handle it. Mr. Rowe later recalled the scene:

Mr. Rowe was sitting in one corner of the room. The Attorney General was in a large chair at his left. McCloy and Bendetsen were next to him, Ennis across the room, and General Gullion on a sofa at his right. The Attorney General had been silent. He was troubled and worried about the great criticism that had been directed at his policy. He simply listened to Mr. Ennis and Mr. Rowe and the latter thought that silence was enough support.

Rowe and Ennis were still hammering hard on the large areas in regard to aliens. The subject of a citizen evacuation had barely been mentioned, and not even considered seriously as far as the large areas were concerned. Suddenly, General Gullion reached into his pocket and pulled out a slip of paper. He began to read it. It was a draft of a Presidential Order giving the Secretary of War authority to move both citizens and aliens from areas he might designate.

Rowe was amazed. He actually laughed. He thought the matter absurd.

His first impression, he said, was "ridiculous"—the lawyer's impression that it was a very badly drawn order. But he and Ennis voiced full opposition and "perhaps too strongly." General Gullion became angry.

They turned to Mr. Biddle for support. Mr. Biddle seemed willing to accept the report immediately. His reaction was the lawyer's reaction, too. This was something definite and concrete; he could go to work on it.

Mr. Rowe didn't know whether the Attorney General had been informed that the citizen matter was going to be broached. Neither Ennis nor he had been informed it was coming. There was nothing they could do.

Rowe was "angry and hurt." Ennis, as he made a last appeal for the individual examination of citizens, looked as if were going to cry.<sup>78</sup>

78. Field notes, interview with James Rowe, October 15, 1942.

In brief, then, officials of the War and Justice departments agreed to the evacuation of citizens and aliens of Japanese ancestry from the Pacific Coast on the evening of February 17, 1942. The matter had been discussed in general terms for specific areas before the meeting. But there had not been, and there never was, a careful weighing of the consequences of mass evacuation of citizens and aliens from large areas between officials of the two federal agencies concerned. Rather, mass evacuation was arrived at as policy in the heat of an argument on another matter, i.e., the evacuation of enemy aliens from large areas. It was military tactics applied to verbal warfare. Army officials were defending their contention that alien enemies should be moved from large areas. They then launched offensively on a new flank, demanding authority for the mass evacuation of both citizens and aliens. Their victory was complete.

After the evening meeting, only details were left. The next morning Mr. Biddle, Mr. Rowe, and Mr. Ennis met with Secretary of War Stimson in the latter's office. The finishing touches were put on a presidential proclamation transferring powers from the Justice Department to the War Department, and the proclamation was in order by noon of February 18. It was presented to the President by the War and Justice departments jointly and signed by the Chief Executive early in the evening of February 19.

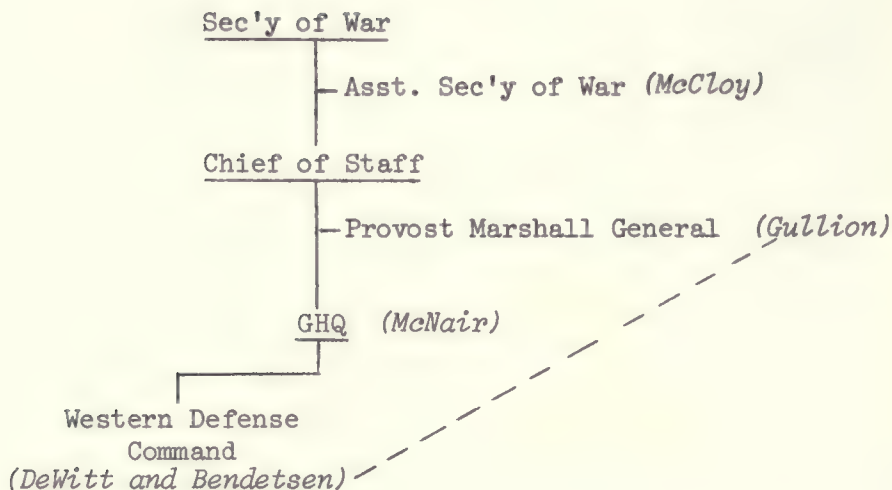
#### SETTING POLICY IN CRISIS: COMMENT

By abdicating their own authority over matters of internal security, officials of the Department of Justice allowed the War Department to proceed with a large-scale program of evacuation of alien enemies and American citizens.<sup>79</sup> It is difficult to reconcile this easy acquiescence with the early public statements of the department. On December 10 the Attorney-General had announced that "at no time . . . will the government engage in wholesale condemnation of any alien group"; but on February 17 the Attorney-General was willing to relinquish his responsibility in order that the War Department could initiate

79. Whether or not the Army could have secured authority for the evacuation in the face of continued Justice Department opposition is a question of no scientific interest. Viewed politically, both sides can be persuasively but inconclusively argued.





CHAIN OF COMMAND

How chain of command usually worked (on left) and how it worked during the Japanese removal (dotted line) according to Forrest C. Pogue.\* Mr. Pogue thinks that, because of the sensitivities and political pressures--in short, the political nature of the task--Bendetsen and DeWitt would just call Gullion directly to talk over and report how things stood.

Rowe thinks Bendetsen reported directly to McCloy as well, during the period the policy was being determined. [JHR]

\*Forrest C. Pogue is head of the Marshall Library and author of the biography of George C. Marshall of which three volumes have been published to date, Education of a General, 1880-1939, Ordeal and Hope, 1939-1942, and Organizer of Victory, 1943-1945 (New York, Viking Press), 1963-1973.



Myer: And that was that.

Rowe: That was the last of the business. I was so damned mad that I didn't argue with Stimson about it.

My chief sin was that I then took that executive order through the Bureau of the Budget, you know. Harold Smith, the Budget Director, might have been the last hope. He had the orders, "Get it through. We of Justice no longer gave any opposition." And he cleared it in a day.

Myer: Well, if he's given orders to get it through, he would have done it. He cleared my appointment in a day. [Laughter] I know he could really move things.

#### EARL WARREN

Myer: I want to get back to Warren for just a moment. Mike Masaoka [Washington lobbyist for the Japanese American Citizens League] and I talked about this Warren business before and after the Supreme Court, and we agreed, based partly upon conversation I had with Warren, that he became the great liberal judge in atonement in part for what he did on the evacuation. [Laughter] Do you have any feelings about that?

Rowe: Nnnno--except the obvious comment that strange things happen to men when they get in that Court.

The most reactionary, wire-tapping attorney general, and under the thumb of J. Edgar Hoover I ever knew was Frank Murphy, and once he got on the Court he was a great civil liberties fellow. And then I think Sherman Minton, the most flaming radical U.S. senator in my day, from Indiana: as soon as he went on the Court he became a real conservative.

Myer: Well, Tom Clark--

Rowe: Tom Clark was better on the Court than he was either in this evacuation matter or later on as Attorney General.

Myer: Oh, much.



Rowe: And one of our mistakes was in putting Tom Clark out there in California to represent the Department of Justice in negotiations on the evacuation decision. Tom was a very ambitious fellow--

Myer: Oh, yes.

Rowe: --And he was going to go with whatever group had the power.

Myer: That's right.

Fry: The way Grodzins writes it up, it's a little shocking to see what Tom Clark did when he got out to California.\*

Rowe: Well, you have to remember that the reason we picked Tom was that he had spent many years in California as the regional head of the anti-trust office out there. He was a Texan and Texans are war-like. (I'm a little war-like myself. I'm still one of the few hawks left on the Viet Nam war.

Myer: Oh, are you? [Laughter] There aren't many.

Rowe: But, Tom, I think, was a good politician, and he felt instinctively what California was like out there. There wasn't much argument about that. There were lots of self-doubts about our own judgments, you know. I didn't know when or if they would break loose and have race riots out there. Every day we kept hearing things like that.

I always remember Ed Ennis--one of my favorite stories about him occurred when we were making one of our appearances before that damn ad hoc western committee of the Senate and House, you know. They were raising hell, and we weren't budging an inch. We were young and didn't have much sense. [Laughter] Bendetsen came down with us and he'd say to the congressmen, they [the Japanese Americans] had to be moved. And we'd say no, they didn't. I remember one congressman saying to Ennis,

"Now just suppose you and Rowe are wrong?"

Ennis, with an Irish smile, said, "I guess the only thing you can do then, is take us out and shoot us." [Laughter]

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\*Grodzins, op. cit., pp. 242-243. See following page.





mass evacuation; one of Mr. Clark's first jobs, they thought, would be to reassure the population that the new program provided adequate protection and that sterner measures were unnecessary. Mr. Clark's method of carrying out this part of his mission was one of reassuring the people that the *military* authorities were taking, and would take, all necessary measures. Every attempt he made to soften the clamor for mass evacuation took this form. For example, he was quoted on February 9:

The Army and Navy believe evacuation of enemy aliens from prohibited areas and their relocation in "clear" areas within the state will be wholly adequate. The Army and Navy are charged with the protection of the Western war zone and know what they want. I will not recommend any other action unless they feel additional steps should be taken.<sup>27</sup>

Following the meeting of General DeWitt, Attorney-General Warren, and Mayor Bowron of Los Angeles on February 11, Mr. Clark stated that "restricted martial law" might be declared. "The Army has not yet asked for it," he stated. "But if it does, I shall go to Washington and recommend it."<sup>28</sup> Mr. Clark's attitude was expressed most graphically after Army authorities had been given full authority but before evacuation policy had been set:

If the military authorities, in whom I have the utmost confidence, tell me it is necessary to remove from any area the citizens as well as the aliens of a certain nationality or of all nationalities I would say the best thing to do would be to follow the advice of the doctor. Whenever you go to a doctor if he tells you take aspirin you take aspirin. If he tells you to cut off your leg so you can save your body you cut off your leg. So I think it is up to the military authorities. . . .<sup>29</sup>

In sum, the Justice Department representative took no stand against the growing sentiment in favor of evacuation. Rather, he voiced his determination to be bound by military decisions and invited statements in favor of evacuation by announcing himself available for suggestions from citizens who were dissatisfied with the existing control program.<sup>30</sup> Mr. Clark's receptiveness was by no means overlooked by the persons interested in fostering the evacuation. At the same time that At-

30. *San Francisco Call-Bulletin*, February 9, 1942; *San Francisco Chronicle*, February 9, 1942.

31. *San Francisco Examiner*, February 12, 1942.

32. Tolson Committee, *Hearings*, Part 29, p. 11158.

33. *San Francisco Chronicle*, February 4, 1942.

The Attorney-General made clear that his restrictions in every case followed recommendations of the War Department<sup>27</sup> and indicated that additional prohibited and restricted areas would be announced. Actually, however, the Attorney-General promulgated no further regulations grew directly out of dis-Army control and mass evacuation grew directly out of disagreement between the Department of Justice and the War Department over the latter's recommendation that large areas be designated "prohibited" rather than "restricted," and the recommendation that American citizens of Japanese ancestry be evacuated with alien enemies from a prohibited zone.

#### MR. CLARK ON THE PACIFIC COAST

With the first announcement of prohibited areas, Attorney-General Biddle appointed Thomas C. Clark<sup>28</sup> as co-ordinator of the Alien Enemy Control program for the Western Defense Command. Mr. Clark assumed his task under conditions of utmost confusion. He had been dispatched hurriedly from Washington, and even the extent of his authority over other offices of the Department of Justice was unclear. He was given only the vaguest idea of the scope and complexity of the program he directed. "I notice in the paper that I am supposed to be placing signs all around these areas that the Attorney-General has designated," he wrote in an early letter to the director of the Alien Enemy Control Unit. "I have no signs, nor do I have any personnel to put them up. I wondered just what the plan was."<sup>29</sup>

Primary responsibility for implementing the evacuation of alien enemies from the many, small prohibited zones was vested in the combined agencies of the Federal Security Agency. Mr. Clark's principal tasks were to co-ordinate the activities of these agencies with Justice and War Department measures and to act as spokesman for Justice Department views on the West Coast. In the latter respect, Mr. Clark disappointed his colleagues in Washington. They hoped that the promulgation of prohibited and restricted areas would quiet the rising clamor for

27. Department of Justice, Press Release, February 10, 1942.

28. In June, 1945, Mr. Clark succeeded Mr. Biddle as Attorney-General of the United States.

29. Clark to Ennis, January 31, 1942.



- Rowe: The congressman said, "That will do a hell of a lot of good." [Laughter] That infuriated them more than anything.
- Myer: When I went into WRA [War Relocation Authority] on June 17, 1942, there had been a committee set up under the executive order that was supposed to be an advisory committee, and Jim [Rowe] was on it. We had one meeting. [Laughing] I'm the kind of guy who likes to run my own show. And I never called another one. [Laughter] That's the first time I met Jim. That's a little side line.
- Fry: Did he ever wonder why he wasn't called to any other meetings? [Laughter]
- Myer: He probably didn't worry about it. He was probably glad to be off the hook. Everybody was busy.
- Rowe: That's right. Of course another inconsistency, as everybody can see, was, as you know, everything the Japanese were doing in California, they were doing in Hawaii. I got into another row on that finally trying to kill off martial law out there; I must say that Harold Ickes was great on that. [Joseph Garner] Anthony, who was the Republican attorney general of the territory out there in Hawaii, they just tried to plow him right in the ground, the military. But he was very tough and independent.
- Myer: Harold Ickes, much to my surprise, was the best boss I ever had, and I've had some good ones.
- Rowe: [Laughing] This is surprising, isn't it?
- Myer: He supported me and I could always get in to see him within eight or ten hours. He was tops, until I got to be Commissioner of Indian Affairs, and then he fought me all the way. [Laughter]
- Rowe: As long as he agreed with you, you were all right.
- Fry: To ask you a question, from a viewpoint of an outsider, with the cooperation and support you were getting from the Navy, and this Lieutenant Commander Ringle [in charge of naval intelligence affairs in the Los Angeles area]--I was wondering if you couldn't have combined with the Navy to bring more pressure on the Army that evacuation en masse was not necessary.





- Rowe: Well, the Navy, don't forget, the Navy (and most of the things I'm saying are things I read last night) under [Undersecretary of Navy, James] Forrestal asked us to move everybody out of Terminal Island out there in Los Angeles Harbor. Here's a fellow--Ringle--way down the line in the intelligence report that we didn't oversee, but Hoover reported to us on what naval intelligence said. The Navy policy was just the same as the Army, no matter what its own intelligence reported.
- Fry: I thought maybe that the Navy's position on the Terminal Island evacuation was an atypical one for the Navy.
- Rowe: Well, maybe it was. Terminal Island may have been more important, I suppose, than if we had a request on Mare Island or any place else up around San Francisco.
- Myer: Navy intelligence had more information than any of the intelligence agencies, including Hoover's, about the Nisei, because they had been working at it for years. People who had jumped ship, and this sort of thing. And Ringle, a commander as you said, he wasn't very high up, was assigned to WRA for just a few weeks and he had already gone back to the Navy before I came along.
- Rowe: Can I interrupt one second? I want to make one phone call, I'll be right back.
- Myer: Go right ahead.

I went to the southwestern conference for governors when I was Commissioner of Indian Affairs, and somebody, the newspaper man who owned the papers down there, gave a banquet party that night and I was invited. I went out a little early and didn't stay very long and came back in, and I was living in town at the hotel, so I was standing there having a drink all by myself and in came Earl Warren. We had a couple of drinks together.

- Rowe: [returning] I'm sorry. Last interruption.
- Myer: He wanted to know a lot of things about whether or not I had seen the opinion he wrote about civil servants in California. This was a good one. If you'll read my book you'll find that I commented on this and said this was Earl Warren at his



Myer: best.\* He was trying to tell me all the good things he did.  
[to Rowe] This is Earl Warren when he was governor.

Fry: They met at a bar at a governors conference. [Laughter]

Myer: Yes. This was the only time. He wanted to know if I had seen this opinion that he wrote--remember he wrote an opinion, he wrote one on the civil service, the California Civil Service--

Rowe: The Personnel Board.

Myer: The Personnel Board had turned all these descendants of alien enemies out. Very excellent opinion. I'm sure he was thinking only of the Germans and Italians, but that opinion was a good one. I comment on that in the book. He told me about that that night. He said, "Did you ever see it?" And he said, "I'll send you a copy."

Rowe: You've never talked to him since when he ran the Court?

Myer: No, I never have seen him since.

Rowe: [to Fry] Did you ever talk with him?

Fry: Not about this. Not yet.

Myer: I'm sure it bothers him. But maybe not.

Fry: His son says it does.

Myer: I know it bothers him. I don't doubt it.

Rowe: Tom Clark publicly said he, Clark, was wrong.

Myer: Yes, Tom was quite a guy to admit that.

Rowe: I've been a little unfair because I've tried to paint a black and white picture, saying I was right and the rest of them were bastards. It was not that easy. I don't think it was that easy. An awful lot of people--the hysteria was going on, we were losing

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\*"This is Earl Warren at his best. In spite of his excellent statement, he had already publicly declared himself in favor of evacuation...." Dillon Myer, Uprooted Americans, p. 17.



cases of Japanese ancestry. The board received information from persons who were "descendants of nationals with whom the United States is at war" (1) would not be certified for state employment, if on existing eligible lists, until an investigation of loyalty and citizenship status had been made; and (2) would in the future not be allowed to compete in state civil service examinations until such an investigation had been completed.<sup>105</sup>

The effect of this action was to bar Japanese from gaining, or qualifying for, new employment with the state; the status of those already employed was not immediately affected.

Officials of the San Francisco branch of the American Civil Liberties Union protested even this restriction,<sup>106</sup> and on February 4, Ernest Besig, a director of the Union, attended a meeting of the Personnel Board, at which it was reported that "temper ran high, words ran freely and arms waved wildly." Mr. Besig asked the board to "reconsider" its action, which he declared unconstitutional. After a heated exchange of words, Mr. Besig was asked to leave the meeting.<sup>107</sup>

Mr. Besig's position received support a few days later when Attorney-General Warren declared the board's action to be unconstitutional.<sup>108</sup> A board spokesman replied that the attorney-general was "totally misinformed" as to the board's intention and that the state's legislative counsel had advised the board that state employees holding dual citizenship could be legally discharged.<sup>109</sup>

In the face of the attorney-general's dictum, the board adhered to its decisions to keep Japanese Americans from gaining new employment with the state and to investigate the citizenship status and loyalty of old employees. The president of the board announced that there would be "no summary or arbitrary dismissal" of workers.<sup>110</sup>

105. "Minutes," Meeting of the State Personnel Board, January 27 and 28, 1942, Sacramento, p. 10.

106. *San Francisco Chronicle*, February 2, 1942.

107. *Ibid.*, February 5, 1942; *Oakland Tribune*, February 5, 1942. Official "Minutes" of the Personnel Board of February 4, p. 2, simply noted that Mr. Besig "appeared requesting the Board to reconsider its action."

108. Above, p. 93.

109. *Nichi Bei*, February 10, 1942. The Japanese American Citizens League pledged "full co-operation" to the Personnel Board in making its investigation ("Minutes," Meeting of State Personnel Board, February 4, 5, 6, 1942, San Francisco, p. 4).

110. *Pacific Citizen*, February, 1942; *Nichi Bei*, February 11, 1942.

ployees and to all on employment eligibility lists whose names "sounded Japanese."<sup>111</sup> This questionnaire was ten pages in length, contained seventy-six items, and asked detailed information with respect to place of birth; evidences of allegiance or nonallegiance to foreign governments; trips outside the country; foreign-language ability; military service; employment history; money deposited or sent abroad; contributions to associations and organizations; ownership of foreign and domestic stocks and bonds; ownership and leasehold of real estate; employment of "near relatives"; personal history of "father and mother and all . . . brothers and sisters"; and location abroad of "grandparents, uncles, aunts, or first cousins."<sup>112</sup>

Dismissals began before the questionnaires were even returned. The State Board of Equalization first took action by suspending its thirteen regular employees of Japanese ancestry on February 27.<sup>113</sup> On March 5 the State Personnel Board, by resolution, suspended its own Japanese American workers, and the board secretary was ordered to prepare dismissal charges against them.<sup>114</sup>

The heads of four state departments expressed doubt over the legality of the suspensions and refused to suspend workers in the absence of orders from the governor or military officials.<sup>115</sup> Nevertheless, the Personnel Board insisted that all questionnaires be returned. And on April 2 the board unanimously passed a resolution that "all state civil service employees of Japanese ancestry employed by any department, agency, board or commission be suspended effective immediately."<sup>116</sup>

111. *San Francisco Call Bulletin*, February 18, 1942; *San Francisco Chronicle*, February 18, 1942. For discussion of manner in which action was taken see statement of personnel officer of State Personnel Board, Tolson Committee, *Hearings*, Part 29, pp. 11279-80.

112. California State Personnel Board, "Questionnaire" in accordance with Senate Concurrent Resolution . . . and Resolution Adopted by State Personnel Board . . . undated.

113. *Nichi Bei*, March 1, 1942. Seven probationary workers were also suspended. At the same time the Board of Equalization canceled the liquor licenses of all American citizens of Japanese ancestry. Previously, similar action had been taken for alien enemies holding liquor licenses (*Nichi Bei*, January 1, 1942).

114. "Minutes," Meeting of the State Personnel Board, March 4, 5, 6, 1942, Sacramento, pp. 6-7.

115. *San Francisco Examiner*, March 12, 13, 1942.

116. "Minutes," Meeting of State Personnel Board, April 2, 1942, Sacramento, p. 4.





Rowe: battles all over the world, which is an important thing to remember. Pearl Harbor was a terrible shock.

Myer: You know that McCloy was our liaison and I saw a lot of John McCloy all through the war. And you know that it never occurred to me to ask this question as to whether he was responsible for recommending to Stimson that he approve of the evacuation.

#### ENEMY ALIENS POLICIES

Rowe: Jack and I had a row through all this period, a continual row. I remember his boys were going to pick up [American Civil Liberties Union Director] Roger Baldwin himself one time for some damn thing, and I called McCloy and said, "Now look-- if you people do anything like that..." Then, of course, he stopped them; he knew better than that!

Another time, the Army picked up some fellow out in Hawaii where martial law was in effect, and flew him right back to the States and put him in a concentration camp in Wisconsin. This fellow was a citizen. I called Jack McCloy and said, "Look Jack, Roger Baldwin, the ACLU Director, says he's going to slap a habeas corpus on you tomorrow. He just called me. I just want to let you know that the Department of Justice won't defend you. I would like to know what you're going to do about it. We just won't defend you." Then Jack, a hard-boiled, smart, tough, Wall Street corporation lawyer, flew him back to Hawaii and put him in one out there; it was under martial law. This was a German, this fellow was.

Myer: Was he? Oh, I was going to say (if he was not a German) we got him later in the camps because [General] Emmons dumped about a thousand of what we called Sand Island boys on us, and they were the toughs that caused this real trouble at Tule Lake because they were all so tough.

Rowe: General Emmons really had some rough ones.

Fry: These were Hawaiians?

Myer: Yes.



Rowe: Emmons I knew. I flew the Atlantic before the war with Emmons. He was a very attractive--

Myer: Oh, he's a nice guy.

Rowe: Socially a gentleman type.

Myer: Oh, yes.

Rowe: Of course, all the pressures in Hawaii were just the opposite of these in California. The social structure of Hawaii could not exist, war or no war, without the labor of the Japanese aliens and the Japanese-American citizens there.

Myer: Sure.

Rowe: The military wanted the Japanese to stay and to work. The entire structure of the society was based on them. But if they were so dangerous in California, they should have been dangerous in Hawaii as well. But they stayed all through World War II.

Myer: [Admiral Chester] Nimitz was a good man in Hawaii. [Commander in Chief, Pacific fleet]

Rowe: Yes.

Myer: He was the top of course on the whole thing. He was a great man and it's a darn good thing Nimitz was out there.

Oh, this is wonderful to talk like this.

Rowe: Of course he might have remembered, coming from the German area in Texas--

Myer: He could have.

Rowe: --His family probably suffered in World War I. I think it would make a difference.

Fry: Yes.

Myer: The old boy who was a news commentator for years, a German from Wisconsin--now dead--

Rowe: I know who you mean.





Myer: He was our friend all the way through because he'd gone through all this business, you see, as a youngster up in Wisconsin in World War I, discrimination and so on. I saw him two or three times in New York; everytime I went to New York, I went to see him. And he'd make broadcasts and tell them what we'd like to have him say, and he'd say it. [Laughter] Just because of this discrimination he'd had.

Rowe: [Hans V.] Kaltenborn.

Myer: Kaltenborn, is right.

Rowe: Well, what else do you want?

Fry: I have just a few specific things that I have picked out. One thing wasn't quite clear to me in Morton Grodzins' book on the presidential proclamation. There were two very early, one made on December 7 and one on December 8, and these gave you pretty great powers, as I understand it, to arrest enemy aliens and hold them in detention if necessary until the end of the war.

Myer: Which they did, by the way.

Fry: But not en masse, still on an individual basis, right?

Myer: Yes, they picked the leaders.

Fry: [to Rowe] But did this order give you the opportunity legally to do this for all enemy aliens en masse if you had chosen to do so? Was this a decision of the Justice Department?

Rowe: Yes, I think so. Except that before I went to Justice, as a matter of fact, when Pearl Harbor came, I was on vacation. I went from the White House into Justice so I was not in the planning stage.

For a long period before Pearl Harbor they had had a particular committee. Assistant Attorney General Frank Shea was on it, a number of people--Ed[ward A.] Tamm, Assistant Director of the F.B.I., now a federal judge, and several others were members. They planned for Justice our entire approach of what would happen in case of war with Japan or Germany. And always in terms of aliens; we never got on the problem of citizens. That always seemed very clear to us. The regular trial process was to take care of bad citizens.



Myer: No, I know you didn't. The only time you got off on it was when you and Ennis went to work to see what you could do in the way of recommendations on the Kibei and some others.

Rowe: Yes, that's right, we fiddled with it.

Myer: You only fiddled with it.

Rowe: Yes. But that's when the committee established the priorities. I noticed that we got these three categories--A, B, C, but applied to aliens only.

Fry: Oh, yes.

Rowe: The planning committee had worked, oh, I would guess, about a year before the war, on these lists, this particular committee in the review of possible alien suspects. And if I remember A, B, C, if you got the C, it was the worst classification. And I think it also required the most evidence.

I can remember when I was out in California arguing with DeWitt after Pearl Harbor, I went to one of our alien enemy hearings on the release of those aliens who had been picked up right after the attack.

What we did, and it became a rather successful system, we picked very good lawyers around the country, the leaders of the bar, private lawyers, as hearing officers. Well, for instance, men let's say of my present age who had been U.S. attorneys in New York, were on these hearing boards. We picked them irrespective of their politics but based on their standing in their communities and at the bar. The only one I ever had any trouble with was one down in Tennessee. [Senator Kenneth] McKellar of Tennessee didn't like somebody not a Democrat getting a job in Tennessee even if he wasn't getting any pay. [Laughter]

But I went to a hearing in San Francisco and the leader of the San Francisco bar was a man, I think, named Leland Harrison. From the old Phleger firm, one of the oldest firms there.

And we ran into quite a storm because he knew all these respectable Japanese--I guess some of them had been his law clients. He was letting them loose one after another and the F.B.I. just raised hell. I remember when I got back we had a meeting with Biddle on this. We, in effect, politely bounced Harrison; he was too easy on the Japanese.



Myer: He was too easy?

Rowe: Yes, because he knew them. Of course, the businessmen of San Francisco were interconnected with the Japanese trade before World War II.

Fry: You do mean Japanese?

Rowe: Yes. They had been very close. But these hearing boards could only recommend action to us, and Ennis had a squad of lawyers making sure we were getting conformity around the nation. One of the things was, we had so much of this going that we made every division of the department assign us five, six to ten lawyers. We were trying to get a lot of these aliens out of prison. Some of this stuff they were charged on was as silly as hell.

Myer: Sure was.

Rowe: Such as: Dillon Myer would say--"You know, I saw some Japanese walking down the street with Jim Rowe, and, you know, Rowe belongs in prison." [Laughter] But off Rowe would go for a few days after Pearl Harbor. The problem then was how to get him out. So we worked very hard--

Fry: You mean how to get him off the list?

Rowe: More than that, how to get them out of jail.

Fry: Oh, this was after Pearl Harbor.

Rowe: As soon as Pearl Harbor hit, they were all picked up.

Myer: They were picked up right that day, December 7th.

Fry: Oh, I see.

Rowe: As time went on, it became a very fair system, far more fair than the British, for instance. We're just now getting around years later to seeing how fair we actually were so far as the Justice alien enemy program was concerned. But not the Japanese after the military took over.

[telephone interruption]

Myer: Well, it seemed to us a good system, because they couldn't go any place else, you see, and we in the War Relocation camps





Myer: were glad to get them because these people, most of them were leaders in their community and the people who went to the centers to begin with, because of the fact that these people were all in the Justice Department camps, were leaderless. We had to develop some new leaders and of course when these people came back, they began to work in again and help us to keep things on the level. It was a wonderful thing to have happen really. We were quite delighted.

#### MEETINGS BEFORE THE EVACUATION

Fry: Mr. Rowe, did you talk to any Japanese groups while you were in California when you first were called out there?

Rowe: I went out really to get in a debate with DeWitt and the military. The communication was really breaking down between Justice and the West Coast, so Biddle said, "Go on out." I spent most of my time with DeWitt and his people, and Bendetsen was there. I have forgotten how I happened to go to this one alien enemy hearing. I think there was one set up and I just wanted to see how it was working. So I went in and watched this board, act on the cases of five, six, or seven Japanese. I never talked with any of them. I just observed.

Myer: My conferences with DeWitt were never very satisfactory.  
[Laughter]

Rowe: My first one was fine. We got along very well. We had this one argument about mass raids and spot raids. He was very reasonable, and he said, "This is hysteria" and--I've forgotten what he said, but Grodzins quotes me as his saying--"There's no problem." Then he just couldn't take the heat. I have a little sympathy. It was a little easier to take it back in Washington than it was in California.

Myer: Oh, sure. Of course he played with Bendetsen and Bendetsen had an "in" back here, and you knew it.

Rowe: That's right.

Myer: And Bendetsen called the shots.



Rowe: That's right. Bendetsen chiefly, and McCloy, who was a very tough able corporation lawyer, now head of the World Bank, later the High Commissioner in Germany, and he's one of the ablest men I've ever met. You have to remember that he was tops in his previous entire background. As I used to say to him at these meetings, "Jack, you're absolutely a typical Wall Street lawyer." The first meeting we had of the committee after the evacuation--before you came aboard, Dillon--I was instrumental in creating the committee. And you never convened again--I was rather unpleasant to McCloy--I was always unpleasant with McCloy.

The first thing he was worried about was how to handle the Japanese property. Now this was a good instinct how he could preserve their property for the Japanese, but I said, "Jack, a typical Wall Street lawyer you are, you're worried about the property, not the people." [Laughter] I don't know how he took that.

Myer: [Laughter] That's right. He tried to do something about it but they wouldn't do much about it.

Rowe: He was familiar with property and understood it, so instinctively his mind went to how to conserve the property; it's a damn good point. But the real questions in the first place were how do you feed them, how do you clothe them, how do you do these things, how do you get doctors and so forth.

Myer: DeWitt didn't do much about it even though McCloy ordered it.

Rowe: Yes.

Fry: Were you in on the problems of getting social agencies to help in the--

Rowe: Right in the beginning it was clear, after we got licked, and before Dillon came in--and I've forgotten who created the relocation authority, before Milt[on Eisenhower] got into the plan as head of WRA.

Myer: Well, the authority didn't come into existence until the evacuation order went to Stimson. And I think it was March 19 that the order was finally signed, and Milton went to work immediately.

Rowe: I remember meeting with Milton over in the Bureau of the Budget and with Harold Smith, the Budget Director.





- Myer: Harold Smith served as the President's go-between on both Milton's appointment and mine. And I saw a lot of Harold Smith during the war.
- Rowe: Harold was a great man.
- Myer: He was a great man. I used to go over and see him. I'd walk in, and he'd grin and he'd say, "You know, I'm not your boss, don't you?" And I'd say, "Yes, I know you're not my boss, you will listen, won't you?" [Laughter]
- Rowe: "I want some money" or something. [Laughter]
- Myer: No, I wanted him to listen about my problem and get any reactions, because I was reporting only to God.
- Rowe: Yes.
- Myer: You know, I wasn't seeing Roosevelt.
- Rowe: Are you sure God was with you? [Laughter]
- Myer: [Laughter] I wasn't sure he was with me, and I wanted some little support. Harold was wonderful. I mean I got very well acquainted with him.
- Rowe: We had a meeting in Justice right after the executive order. I would guess Ennis and I said, "Look if we're going to do this, somebody has problems." So we got in the labor people, social workers, and everyone else. I just remember a great big meeting down there. It was the first meeting. This was when I made my remarks to McCloy. McCloy quite intelligently in a sense, grabbed on to how do we conserve this property so that the California citizens didn't steal it.
- Myer: Sure.
- Rowe: I was bad-tempered still over this whole business and I made the remarks about--
- Myer: [to Fry] Jim does have a bad temper when he takes a notion.
- Rowe: That's right. [Laughter]
- Fry: It's hard to imagine, sitting here listening to his gentle voice.



Rowe: [Laughter] Well, I was a lot younger then, a lot surer of my point then. [Laughter]

Myer: [Laughter] That's right.

Fry: There was another question that I had about pressure groups which, as I understand it, functioned through the congressional delegation largely. Did you have any direct contact with the Associated Farmers or others?

Rowe: No, the Associated Farmers had so bad a reputation back here in Washington. I wouldn't talk to them if they'd turned up. Everybody knew that they were a bunch of bandits, before this happened. They've been on the wrong side of everything as long as I remember.

Myer: The Immigration Committee--

Rowe: The people that put the real pressure on us were the western congressional delegations.

Myer: Oh, sure.

Rowe: I don't mean just California; Washington, Oregon.

Fry: Yes, combined.

Rowe: That's right.

Myer: There were only about twelve congressmen who didn't put pressure on, I know.

Rowe: I didn't know there were that many.

Myer: Why I know that there were that many. There were thirty-three congressmen; twenty-two of them signed the petition to the President to fire me after Tule Lake. [Laughter] (The rest of them wouldn't sign.)

Rowe: That was sometime later, though. They were all at the meetings and the only one that ever stood up against the evacuation was Senator Downey. I don't remember whether Sheridan Downey died or quit or didn't run again.

Myer: No, he was still there at the end.



Rowe: And he was just a rather odd fellow; he was a very odd, peculiar fellow. He had to be to do this.

Fry: And I read that he made a speech on the floor, but he was the only one.

Myer: He was very worried about the Tule Lake incident. He called me up and he got Biddle, as I remember, to make a statement. And he got Jimmy Byrnes, who was over in the President's office at the time, to send up a statement about the whole business. He was very helpful and he just went to work on it and tried to allay the hysteria out there again. You see this was our worst moment. It was more than a moment, our worst month in the whole period. [Laughter]

Briefly, what happened was that things blew up when I was up there and before I got back to Washington, the Army came in and took over.

Rowe: What was the date of this?

Myer: In November, '43. It was right after--

Rowe: I got the hell out, and went into the Navy, and life was much more peaceful out there in the Pacific. [Laughter]

Fry: [Laughter] Where you could fight only the war.

Myer: Well, the Army blocked out all the press, and they wouldn't let them in, you see. There were all kinds of stories coming out, and they wouldn't let them in and they wouldn't let them talk so--oh, God, we got it and the Army didn't get it. We got it.

The night before I went to Tule Lake on that trip--excuse me one second, I'll quit talking--the Press Club of San Francisco had me as a guest, and the boy who was the New York Times representative out there was my host. And I had a beautiful time. They were lovely, just lovely. Then I let him down because I could never get him on the phone from Tule Lake. [Laughter] And he thought I was a double-barreled SOB. [Laughter] I finally got his friendship. I spent an hour and a half with him at lunch finally, but it was one of those things.

Go ahead.

Rowe: What do you do? Do you teach at California or what?





Fry: I just research. You haven't heard the latest complaint that no one teaches at Berkeley? [Laughter]

Rowe: Yes, I have. I'm an Overseer at Harvard, and I wish that you had kept most of your people out there instead of corrupting us, which is what you did.

Myer: May I say a word about this--I said I'd quit. She and Willa Baum operate the Regional Oral History Office of The Bancroft Library, and the reason I know her so well, and the reason she got in touch with you was because I did my memoirs on tape. And they put it between covers for me. So I got quite well-acquainted with these people.

Rowe: Well, I hope I'll be better with you; I've got a Kennedy oral history, a Johnson oral history, and a Truman oral history right in front of that desk drawer, and I hope to correct them sometime.

Fry: Oh, my. I have a spy here who can keep calling you up and reminding you, right? [Laughter]

Rowe: I have a daughter who just got an M.A. out in California a few years ago.

Fry: Oh, is that right.

Rowe: And at the time she was a wife and mother, and to escape those duties, she went out and got an M.A. in public administration.

Myer: What about your young son who was your young son in '56?

Rowe: Well, he's at Harvard now. He's a sophomore at Harvard. We quarrel constantly, he has long hair, he's against the war--he's on his way to Canada, he says--and the usual problems. He said to me one day, "Let's face it, father, you're just an old reactionary, you're over the hill." [Laughter]

Myer: I remember one morning you didn't get to the office by the time you usually should, you remember, and you apologized because you said you had a bit of a problem with your young son, and you had to stay home for awhile there to bring him into line because his mother was having a problem. [Laughter] He was about five or six then.

Fry: Oh.



Rowe: As I remember, yes, he didn't like kindergarten. He'd just leave it every day. His mother couldn't handle it. [Laughter] Finally we changed him over.

Fry: I have two in college also. It's typical, I guess, the long hair and anti-war.

Rowe: And maybe they're right.

Fry: If anybody can end the war, maybe they can.

#### TOM CLARK AND THE CAPITULATION

Fry: Well, I did have a few other small questions here to ask you. One of them is curiosity about Tom Clark, who doesn't quite come off in a whole picture in the Grodzins book. Particularly in the realm of communications. When he was sent out to California, he didn't know quite what to do when he got there.

Rowe: I think Biddle and I--I think that's right, yes--it was probably my idea, Biddle said we ought to have somebody there. I said, "Why not Tom?" (I'm sure I did though it's pure speculation; I can't remember.) I'm sure I said, "Let's get Tom," whom I had personally brought back from California to run the special war fraud unit in the anti-trust division, mostly because he was a great friend of Lyndon Johnson's and Sam Rayburn's, and they wanted him back.

Myer: And Senator Tom Connally.

Rowe: And Tom Connally. And Tom was a very ambitious man. So I said, "Let's get him out there; he knows California, and he can handle it; he's a very wise, political fellow." Now he did get out there. I assume we just flew him out without worrying about how he was going to do it. And we didn't tell him how to do it. We didn't know ourselves. I guess we thought it was his problem to find out and go do it.

Fry: And as I understand it, he landed kind of in the middle of these negotiations about prohibited areas.

Rowe: That's right. He got the pressure from both sides. He hadn't been in it up to this moment. Then he got caught



- Rowe: between the tough fellows back in Washington, you know--the Biddle, Rowe, Ennis civil liberties group--the rear echelon types in Washington and the California people putting all sorts of pressure out there to evacuate the Japanese.
- Myer: I think the point you made earlier, Jim, was a good one, and that is, he saluted the military.
- Rowe: That's right. It's perfectly clear that he agreed with them. And he was disturbed--Tom was not then what I would call a very thoughtful or philosophical fellow, and he was getting all this pressure from everybody, from all the people he was seeing, whether it was Earl Warren or anyone else, they were all screaming, "You've got to do something." Also civil liberties have never been a burning issue in Texas.
- Myer: And columnist Walter Lippmann--
- Rowe: Oh, Lippmann was impossible. I tried talking with him. You know, Lippmann has been wrong all his life on all the big issues, as I keep pointing out.
- Myer: I think he has. I agree with you.
- Rowe: He said that if we ever got caught in a two-ocean war we'd be defeated, you remember. Another whopper in 1932 was, "Roosevelt is an amiable gentleman with no qualifications to be president other than his desire to be." The whole history of Walter Lippmann was like this. A nice man, but nobody is entitled to have his stature and still make so many mistakes.
- Fry: Well, then Clark flew back on February 16, and on February 17 we had the capitulation meeting you spoke of, which was in Biddle's home?
- Rowe: Yes.
- Fry: And I wondered why there wasn't any briefing by Clark, who had just returned from California, of you all before the meeting.
- Rowe: There may have been. Clark may have come in and said, "Look, things are tough," and so forth. "We're in trouble and we've got to do this and that." We would have listened to him. He may well have done it. I don't think he talked to Biddle. He would have talked to me or to Ennis or to both of us. I seem to have some vague memory that Tom and I had dinner before we went out to Biddle's, but this is very vague. And then we





Rowe: just walked into the meeting and that was it.

Fry: Neither Tom Clark nor anyone else knew that the Army at this point had accepted General DeWitt's report?

Rowe: I don't think so, no. I think that was done in Washington, and this view of mine is based on Kahn, reading his manuscript and debating with him and reading part of his book. Kahn said, as I remember it, that Stimson and McCloy went to see Roosevelt to get clearance. Sometime or other I have since decided in my own mind that there was some discussion of Roosevelt's decision with Biddle, but Ennis and I were not in on it. Although Biddle had been with me all the way, he was always disturbed about the problem and he was worried. After all it was his reputation that was being battered, not mine. I was just a young man perfectly willing to raise hell. And he had been worried and disturbed whether it was the right thing or not. I had no idea Biddle was not with Ennis till I got into this row at his house with Gullion. Biddle just sat there. Then I knew I was in trouble.

Myer: Did you read Biddle's book?

Rowe: Yes. It sort of bothered me.

Myer: So did I. I met him over at the Cosmos Club one day, and he was delighted to see me. And he said, "I want you to read my book and I want to have lunch with you." I read the book, and didn't have lunch with him. I didn't dare.

Rowe: Well, I had a long discussion with Francis about the book and everything else. He was a very close friend of mine--

Myer: His book was so full of holes.

Rowe: --He always has been a close friend, and I spoke at his memorial service. I think what he said, and I think it's in the last book written by the two women, The Great Betrayal or something.\* They quote Biddle as saying, "I should have made the fight. I didn't make the fight because I was the new cabinet officer." And he was. He'd only been in six months.

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\*Audrey Girdner and Anne Loftis, The Great Betrayal, the Evacuation of the Japanese-Americans During World War II (New York: MacMillan, 1969).



Rowe: And it's the way the younger lawyer defers--is deferential to the older lawyer who was Stimson.

Myer: That's right.

Rowe: And he couldn't deal toughly with Stimson because Stimson as Secretary of War was fighting the war. I think that's important; this problem, you should remember, that in Washington in 1942 it was a fringe problem in terms of the war. We'd just been belted one at Pearl Harbor.

And really nobody thought this evacuation question was too damn important. The only reason I got in it so deeply was that it happened to be part of my job in the Justice Department.

Myer: We lived with all that during the war in W.R.A.

Rowe: That's right. You know, "We're fighting a war."

The other thing that drove me right off my rocker was this business of "military necessity." Only the military could make the judgment of what "military necessity" was. I looked at these oafs who were telling me it was "military necessity"; they had less knowledge of whether it was than I did, which infuriated me. I don't mean the top people, but some of these damn generals. I've been leery of them ever since.

Myer: We took it on the chin all the way through the war, because people didn't want us to fight with the military.

Rowe: That's right. Yes. And it's a hard thing to--even Biddle had trouble in the early stages--"How can I really tell these fellows that I know their business better than they do?" he would say. And I used to say that they don't know their business.

Myer: That's right.

Fry: It's unclear to me what exact job you were in.

Rowe: I was what they call the Assistant to the Attorney General, which is now called the Deputy Attorney General, the second job in the department.

Fry: Were you in that before Pearl Harbor? For quite a while?



- Rowe: [checking papers] Technically, I was confirmed by the Senate on November 17, 1941. The President signed my commission and then I went off to Florida on a vacation between the two jobs.
- Fry: You had come from the White House then?
- Rowe: Yes, I had been Administrative Assistant to the President for four years.
- Fry: I see.
- Rowe: I was the logical man to have fought this out with the President, even more than Biddle, because I was closer to him. If I'd asked to see him--I'd been in there for four years--and I could have made sure the President really had the facts on both sides so he could make a well-rounded decision. He didn't get that chance and that was the fault of the Justice Department, and, more particularly, my fault.

#### PEARL HARBOR DAY ARRESTS AND RELEASES

- Myer: There was one thing that Ed [Ennis] told me that he didn't remember. Do you remember when the bill was up to allow this business of getting rid of the citizenship of the Japanese-American citizens? McGranery had come down to the Department of Justice in the meantime, and he went up with the bill for the hearings.
- Rowe: Jim McGranery took my job when I went off to the Navy.\*
- Myer: McGranery, of course, was backing up Biddle. Ed was momentarily diverted when somebody said something to him, just as the question came up to Biddle as to whether he thought the law should pass. McGranery, I found out later, leaned over and whispered to him and Biddle said yes, he thought so. I asked Ed about it later, and he said, "Somebody

---

\*Congressman James Patrick McGranery of the 2nd Congressional district of Pennsylvania replaced Rowe as the Assistant to the Attorney General when Rowe left Justice for the Navy. McGranery, now dead, was later a federal judge and was, briefly, Attorney General under Truman. J.H.R.





Myer: leaned over and talked to me and this all went over my head."

Rowe: Ed was in a row with Edgar Hoover most of the time too.

Myer: I'm sure he was.

Rowe: Because Hoover was very tough on the bad boys. He would have put an awful lot more of these aliens in jail if we had let him.

Myer: Oh, sure he would.

Fry: Can you give me any more information about your problems with local law enforcement officials wanting to make more indiscriminate arrests?

Rowe: In California? No, I just can't remember. I'm sure we had them. Biddle was making constant statements, good statements; in fact they were too good. They just got everybody annoyed finally. I don't remember that we had much trouble on the local scene. We had trouble on the east coast with some of our U.S. attorneys picking up too many innocent aliens. Germans and Italians and a lot of damn Nazis. Connecticut was particularly rough for some reason. And we had to get very tough with them, but those were our own people in Justice. I think the answer is that Biddle had grown up through World War I and had seen the really bad abuses then and he was going to make sure we just weren't going to have a Department of Justice like that. You must have read of Attorney General Mitchell Palmer's "Red Raids" after World War I?

I can think, now as I have many times since, how much better we could have handled it. But the atmosphere--you know this was a crisis atmosphere every day--in the early days of World War II when the United States and England were taking a severe beating.

Myer: It's always easy to look back--

Fry: I understand that telegraphic approval from Biddle was required before making any arrest. There were so many arrested: 736 on just December 7th alone. I wonder if this telegraphic approval went through you? The logistics seem--

Rowe: On December 7th, I was down--where was I? Pompano Beach in Florida trying to get back to Washington in an airplane. And



Rowe: then the first week that I got back I spent most of my time in the White House in my office there, and back and forth to Justice.

Fry: I see.

Rowe: But Justice had all this ready and geared to go. I think those telegrams must have been prepared way ahead of time. That sort of thing was a very well-run job. Except that we picked up too many. But this is the same thing today as the police do.

And then as soon as we got them in jail our problem was-- and this I give Ennis most of the credit for--the problem was to just get the innocent ones out as fast as we could, the people who didn't belong there. Get them back to their families and get them back to their business and so forth. And Ennis and his staff and the hearing boards did a rush job, I think it was within six months or a year. Because we had to have a careful record to let them go; this was the area where Ennis and Hoover were at each other's throats all the time. Ennis was a lion!

Myer: I'm sure they were.

Rowe: Ennis, Ennis was not very much in favor of keeping people in jail without pretty good evidence. And all this was not the kind of evidence for courts--I mean hearsay, that these "alien enemies" had been really bad boys.

#### PROHIBITED VERSUS RESTRICTED AREAS

Fry: I was wondering about how the issue came up between the--let's see, I want to get these terms correct--prohibited areas and the restricted areas. The way the chronology reads, about January 25th the Justice Department received the first recommendation for specific restricted areas, from the Western Defense Command. And these were all relatively small areas and they were called prohibited areas rather than restricted. And "prohibited" meant I think, that they couldn't go into them at all and had to move out of them if they lived in them.

Rowe: Yes, that's right. That's not half of what the Army tried to do, which was the fight that we thought we were in--this, I am sure, was Bendetsen's idea for a restricted area. There



Rowe: were reasons, military reasons, why some should be restricted. But after a few small areas, the Army came in again on Los Angeles or was it Seattle?--the Army just made the recommended restricted areas huge!--practically the whole city of Los Angeles or Seattle. And we just said, "The hell with that, take it away." We really thought this was the real fight. The citizen thing, evacuation of Japanese-Americans as well as aliens you know, we just didn't take too seriously. We clearly had no statutory authority to do it. We were just telling the Army, "We're not going to do this,"--accept restricted areas for alien enemies and--they were saying, "You have to do it--military necessity." If I ever hear that phrase again in my sleep, I'll scream.

And this is what we really thought the fight was going to be about, driving aliens out of the whole city area instead of only from around a power plant or some important installation. The first Army recommendations that came in from the field were very good, it seemed to all of us, with good maps and--I've forgotten who in the Army brought them over to the Justice Department but somebody pointing out to us on the maps, "This is a power plant," and so on.

Fry: Yes, and they were very small areas.

Rowe: Small and reasonable and could have been well guarded. Then the Army found that we weren't being tough enough, and they were buckling under their pressures in the West, so they just started to make restricted areas include practically the whole community.

Fry: And then, as I understand it from Grodzins,\* the Justice Department countered with a "prohibited area" that would extend up all along the coast from Portland to Los Angeles, but the Japanese-Americans could--and the aliens--could live there and come in and out on their usual business with passes.

Rowe: I think probably. You'd better ask Ennis about this because he would still remember a lot more about it than I. It was with a check point for the residents probably.

Fry: So that it would be much less displacement, even though the area was larger. But apparently this ploy didn't work.

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\*Grodzins, op. cit.





Fry: Did you have anything at all to do with the Attorney General, Earl Warren, while you were out there?

Rowe: No. The only persons I dealt with in California were DeWitt and his people. I would go to the meeting at the Presidio with DeWitt and his officers and deal directly across the table with him. Usually I had with me the top F.B.I. agent in San Francisco. And then I'd come back to my San Francisco hotel room and talk with Biddle and Ennis and occasionally Hoover on the long distance telephone. And as I look back-- I assumed the Army had wire taps on my telephone.

Myer: I wouldn't be surprised.

Rowe: I worked on that assumption pretty much in those days. And I was right too. The only other thing I did out there besides have dinner with some friends was to go off one day and watch the alien enemy hearing board on several Japanese alien enemies. These Japanese had been in California for many years and I don't know why they hadn't become--well, they couldn't become citizens. They were the older ones.

Myer: No, they couldn't.

Rowe: They were the older group.

Myer: They didn't get a chance to become citizens until 1952.

Rowe: I never talked with state Attorney General Warren.

#### PRESSURES

Fry: Well my impression then, from what you said this morning, is that it seems like the decision was based on things that were pretty irrelevant to what the Justice Department was doing. It was pressure groups working through the congressmen, who in turn pressured the President and the cabinet officers--

Rowe: I think the real pressure was from Congress, and the reason they were all raising so much hell was the pressure was on them.

Myer: That's right.



- Fry: From these organizations that Grodzins writes about.
- Rowe: That's right. And then the old business of "one Jap's just like any other" you know, and it didn't matter if he's a citizen or anything else, when "you've got a war on."
- Fry: Besides, they were competition for the white agriculturists in California.
- Myer: I was going to say, a lot of these were rural congressmen, you see. Associated Farmers and all were pushing them to get these people out where they could take over and--
- Rowe: And this was perfectly apparent to us; this didn't bother either Ennis or me. We knew why the heat was on. It was giving us a hell of a lot of trouble, but we understood, you see, why Jerry Voorhis and the rest of these California liberals were just sitting there. I'd be interested to see what would happened to your California liberal congressmen today if such a crisis came up!
- Myer: A lot of them kept still.
- Rowe: Yes. And it was the kind of issue that if they hadn't kept still they wouldn't be in Congress. I really think they would have gotten licked.
- Fry: You didn't try to use any counter pressure groups or anything? Like there was a Fair Play Committee--
- Rowe: We tried, and eventually I got Congressman [John Harvey] Tolan to call a congressional committee hearing in California. He had a liberal, courageous committee. Jack Tolan was a man with a lot of courage. He was a congressman. But we moved him out there too late to do any real good.
- Myer: [to Fry] Jim was responsible for that.
- Rowe: We tried all these stunts, but there wasn't any effective counter-pressure.
- Myer: Too late. Came too late.
- Rowe: We were in a war, and as I look back now I don't really see that there was any stopping this.



- Fry: How did you get Congressman Tolan to come out to California with this committee?
- Rowe: I went down and talked with him.
- Fry: How did you convince him?
- Rowe: Well, he was a pretty liberal fellow.
- Myer: He was a nice person.
- Rowe: He was a man who--I don't think he cared much. He'd been a public official in California and in Montana, had lots of tough political fights and one more didn't bother him. He had a good staff. Expert in divining what people like the Associated Farmers and those types would use, and he'd try to expose them.
- Fry: Carey McWilliams, at this time, was in a position in California which dealt with migratory farm labor.
- Rowe: He had what--three votes? He was all right but he couldn't do a damn thing. Nobody in California could do anything. I told Tolan, I remember having several discussions with him, I think he was just going out and having a nice impartial hearing. But, at that time, we couldn't get anybody on the other side. All the newspapermen--I tried to talk to Lippmann before he wrote that damn fool column of his--
- Fry: What about California papers? Did you deal with them any?
- Rowe: We talked with [Manchester] Boddy. (I read this--most of the things I'm telling you I read in Grodzins. I wouldn't remember most of it.) But I remember Boddy came in to see Biddle and me in Washington. He'd run a great liberal paper in Los Angeles, and here he was screaming bloody murder for evacuation against Biddle.
- Myer: Oh, he was.
- Fry: By that time, why was he doing that? Had he changed just in that last week before the executive order or something?
- Myer: Haven't you ever seen people hysterical?
- Rowe: Let me suggest a parallel to you. I mean I assume you were out at the University of California while you were having all





Rowe: your troubles and riots out there in Berkeley. This was the same thing except on a much larger scale. People are not necessarily rational human beings.

Myer: That's right. I think everybody got--

Rowe: Scared.

Myer: Everybody got scared.

Rowe: Everybody was. I mean we took an awful beating at Pearl Harbor and it caught everybody unawares and then all the news that followed was the Japanese moving, moving, moving. They just had one victory after another.

Myer: They sure did.

Rowe: And the British were not doing well. Hell, the whole world might have come crashing down. And the first requirement of the government was order. Law comes after order.

Myer: By the way, Jim, I'm just reading a first volume of a two-volume work on the rise and fall of the Japanese empire. I think it's good. It details some of this thing that happened before Pearl Harbor. And I think the name of the writer is either Nolan or--

Fry: Nolan.

Myer: That's right. He writes well and I use it for bedtime reading now. I don't have too much trouble keeping awake but [laughs] I was reading some of it and it was hair-raising. Up to Midway, they were--

Fry: Well, I'd like to find out what the Japanese were really doing in the way of espionage on the West Coast and what the danger really was at this hour.

Rowe: I would guess that they were probably much better in Hawaii than they were on the West Coast.

Myer: Oh yes.

Fry: They had that one submarine showing at Santa Barbara but I guess by that time the decision to evacuate was pretty well made, wasn't it? Do you think that influenced them?

Rowe: When was it? I can't remember.



- Fry: I don't remember the date. [February 23, 1942]
- Rowe: It's not surprising. When you consider the then existing naivete on serious military strategy and tactics of the American people, including our military. How did we know the Japanese wouldn't be coming or landing barges onto the California beaches?
- Myer: They didn't expect them in Pearl Harbor, but after Pearl Harbor they didn't know where they were going to pop up.
- Rowe: And this, I think looking back, was an impossible problem to handle. If I had had Jack McCloy's job, I might have done the same thing.
- Myer: You might have. I might have too.
- Fry: You might not be able to even answer this, but, you know, California had a long tradition of anti-Japanese legislation and a lot of pressure groups that have gone back for decades and decades. I wondered if this was cranked into the realization by the Department of Justice--the difficulties of dealing with the population in California.
- Rowe: I think we underestimated how much hysteria we were going to get. I think we thought that with the system we'd set up, we could handle it and we could convince the people in California that we could get along without evacuation. But we never could get the story out that we had it under control. The thing that worried us more and more was the vigilante talk, "Those people back in Washington aren't protecting us, and we'll take the law into our own hands." A good western tradition. We got rumors of shooting at Japanese. I don't know if this was true either. But it was a worrisome thought. I didn't want to make such mistakes that I would be responsible for terrible race riots.
- Myer: We had about thirty cases of people shooting into their houses, trying to scare them out when we were trying to relocate them back home, you know, later on.
- Rowe: I'm not at all sure that if this had not been done, we might have had real riots.
- Myer: Possible.



Rowe: And now, as I look back at some of the race riots we've had since, we might have had that. It was scary then.

#### POSITIVE ASPECTS OF THE RELOCATION

Myer: There were some pretty good liberal people who would argue that this was protective to the Japanese-Americans.

Rowe: Well we felt that a little ourselves at this time.

Myer: I'm sure.

Rowe: We were not dogmatic or monolithic, Biddle and Ennis and myself.

Myer: And I'm sure that some of the, especially the older Japanese, Jim-- We had two groups, some that were never happier. One of them was the 8,000 who had worked up and down the coast as migrant labor and their bones were aching and they weren't going to go back home. We had to pick them up by the seat of the pants and the scruff of the neck and put them on the trains to get them relocated. The old ladies, who had worked on farms throughout all these years, had the first leisure they had in their life, and they didn't want to go home.

Rowe: I don't blame them.

Fry: I heard from one who was a teenager at the time that the young teenagers had quite a ball.

Myer: Well, they had a ball. [Laughs]

Fry: I said, "It was kind of like a government commune, wasn't it?"

Myer: A youngster, one of the girls I know best, who used to be Mike's [Masaoka] secretary years ago, told me that she was only ten years old when she went to Tule Lake. And I said, "Then you remember about all the marching, all the folderol that went on out there, the Japanese flags and so on."

She said, "I don't remember a thing about it." She said, "We had a ball. Here was this great big center, it was enclosed. Nobody felt they had to worry about us because we couldn't go outside. We just played hide-and-go-seek and we were all over





Myer: that center and into everything." And I've had several of the kids, the younger kids, tell me about that.

Rowe: Well, it's hard to tell, Dillon. I went out-- You know, one thing we did--I guess it was before the United States got in the war--we took all the Italian seamen off their ships after the war started in Europe and we put them out in Montana. From the big transatlantic ships. These were aliens. These were real aliens. Just before the war, I can't remember what authority we had for this, but we did. The ships were in port when the war started and they couldn't get out and there were some complaints about treatment so I went up to Montana to take a look at this place.

And the Border Patrol was running it very well, I thought. Because in effect they let the Italian ship captains run the inside. And I got quite charmed with this Italian captain--he was the senior captain in the whole camp and the captain of the largest Italian ship I think, and he spoke beautiful English. He had certain complaints. Most of the problem was, he wanted to get his men out of the camp and working on maintenance of the railroad tracks and the railroads wanted the men. [Interruption - telephone] We finally did this.

The railroads wanted them. I was really out there to make sure the Italians wanted to get out and work (and get paid).

And finally I said, "Captain, this doesn't seem like a bad life--to be locked in here." It was a very clean, attractive camp.

And he said, "Mr. Rowe, walk with me to that fence." And I walked with him to the fence and he said, "You see those beautiful mountains?"

I had grown up in that country out there, and I said, "Yes."

He said, "You can walk out of here and walk up to them; I can't." He said, "That's the problem."

Myer: That's the problem.

Rowe: He said, "I can't just go and walk to the mountains."

Myer: By the way, one of the nice spots, one of the nice relationships we had was with Immigration Service. They were very courteous. Willard Kelly was our liaison.



Rowe: On the Border Patrol. Wasn't he a tremendous fellow?

Myer: He was great.

Rowe: He ran this camp up in Montana. He was a great public servant.

Myer: He was a great public servant. I feel very warm toward them.

Rowe: Many people often get much better public service than they deserve.

Fry: Our time is up. That's it, I think.

Rowe: Frankly, everything I've said that I think is of any importance came out of Grodzins' book.

Fry: Well it's good to know that you agree basically with Grodzins.

Rowe: When's your book get out?

Myer: It's out. I mean I have my early copies, but it's going to come out on the market on the 15th of March. [1971]

Rowe: Well, I'll buy one.

Myer: Good. And I'll write in it.

Transcriber: Emily Ross

Final Typist: Keiko Sugimoto



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Percy C. Heckendorf

PLANNING FOR THE JAPANESE EVACUATION  
AND  
REFORMING REGULATORY AGENCY PROCEDURES

An Interview Conducted by  
Amelia Fry







Judge Percy Heckendorf



Percy C. Heckendorf as District Attorney



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## INTERVIEW HISTORY

Date of Interview: May 22 and 23, 1972

Place of Interview: The study of Judge Heckendorf's home in Santa Barbara, California

Those Present: Judge Heckendorf and the interviewer.

Percy C. Heckendorf was selected as an interviewee because of his active role in three historic occurrences in the Warren Era in California: In 1941, months before the attack on Pearl Harbor, District Attorney Heckendorf organized state law enforcement district III (Santa Barbara and vicinity) for Attorney General Earl Warren's conference on civil preparedness. Afterwards, the district attorney assisted in the statewide program to prepare county-by-county maps of the pre-evacuation locations of Japanese Americans under the direction of Attorney General Warren.

It may be recalled that columnist Walter Lippmann came out with an article in favor of the evacuation February 12, 1942. Referring to a dinner in Santa Barbara in which Lippmann, Warren, and Heckendorf discussed the potential hazards of the strategic locations of the Japanese-Americans, Heckendorf says in a letter to Warren, "I have no doubt that the presidential order stems back to the article written by Lippmann following the talk with you."

In the following year, Heckendorf took an assignment from Warren which continued into Warren's first term as governor: to reform the licensing and discipline procedures in the state regulatory agencies. The latter efforts focused on Warren's desire to establish due process by patterning administrative procedures closely after judicial proceedings. Helen MacGregor, personal secretary to Earl Warren, had reminded us that this was during the time when there was dissatisfaction among the public and the licensees on the way hearings were being conducted by such boards as the medical examiners, dry cleaners, contractors license board, cosmetology, and thirty-odd others.

The four-year task ended with the legislature passing the sweeping reforms in 1945. Heckendorf resigned from the Department of Professional and Vocational Standards in October of 1946, his job done.

Another task which he performed with Governor Warren was attempting to persuade Congress to kill legislation that would transfer ownership of the state's oil-rich tidal lands to the federal government. In this Warren represented the state and Heckendorf, Santa Barbara--a city with one of the longest shorelines in the state.





Finally, it should be mentioned that the district attorney was instrumental in the Santa Barbara area in several of Earl Warren's political campaigns--a task he shared with Thomas M. Storke, owner and editor of the Santa Barbara News Press.

The no-nonsense workroom where the boxes of papers were stored and where most of the interview took place was in contrast to the other rooms of his beautiful and gracious home. The first day was spent going through records of the defense activities, such as eleven volumes of the minutes of the California State War Council (1943-44), pamphlets on administrative procedure law, and miscellaneous correspondence. A short recording session was held on the first day. The next morning the taping was based on the previous day's research and on a few items which had been mailed ahead to him from this office.

In appearance Judge Heckendorf was younger than his years, dressed in an impeccable sport coat and slacks combination with a beautiful tie that coordinated the colors. Although his physiognomy might not match the conventional profile of a "judge" as seen in television serials, he did look the part because of his sparkling white hair, glasses, and a manner that was deliberative and attentive to bringing together all parts of a picture down to the last detail.

This office sent a rough-edited transcript to him for further corrections on July 9, 1973, and the judge took seriously his task to review it, even taking it along on his vacation. He rephrased some sentences and revised where we had questioned exact meanings and names. He continued working on it back in Santa Barbara, but before his task was completed, tragedy struck.

Judge Heckendorf was hospitalized with a stroke, which was followed by pneumonia and other complications and, finally, death on January 29, 1975. His widow, Louise Heckendorf, worked closely with her attorney, J.E. Delwiche, and with us to negotiate an agreement on the proper disposition of the manuscript--if, indeed, any release could be made ethically. The production of a written summary of the transcript was considered as a compromise substitute in April, but by May this was discarded because such a digest could distort even more what he had to say.

The dilemma was resolved in August when Mrs. Heckendorf used her power as executor and signed the release. Noting, "I have never known any other person quite such a perfectionist as he," she requested that this office go over the transcript again for accuracy and conciseness and then assured us, "I am certain Percy Heckendorf would have approved the use you intend to make of the material."\*

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\*Letter, Louise Heckendorf to Amelia Fry, August 23, 1975.



The judge's own pencillings and marginal notations reach mid-way through the section on the Alcoholic Beverage Control Board. Miriam Stein, a specialist in Earl Warren's law enforcement days in the Japanese-American relocation, had audited the tape and checked the transcript. It was further reviewed by this interviewer, and each of us inserted elucidating words in brackets and added footnotes where allusions had to be clarified. It was then final-typed and indexed. A few of the shorter and more pertinent supporting documents were selected for the appendix. However, the majority of the papers that furnish the basis for the interview had to be deposited separately in The Bancroft Library because of their bulk.

Mrs. Heckendorf's help was an absolute necessity, without which the final volume could never have reached the manuscript sections of The Bancroft Library and the UCLA Department of Special Collections. Special thanks are also due to Richard W. Robertson, attorney and longtime friend of Judge Heckendorf's, for the many hours he spent advising, picking up papers, and helping in the delivery of the boxes and scrapbooks to Berkeley.

One final note of interest is that Mrs. Heckendorf, introduced to the process of oral history by her efforts to resolve the fate of her husband's transcript, is becoming herself an enthusiastic apprentice in the art. It is hoped that her future efforts in documentation, probably in the Santa Barbara environs, will bear much fruit.

Amelia R. Fry  
Interviewer-Editor

22 November 1976  
Regional Oral History Office  
486 The Bancroft Library  
University of California at Berkeley





# Judge Heckendorf, 76, dies of stroke

Judge Percy Charles Heckendorf, 76, of 32 E. Junipero St., died yesterday afternoon in a local hospital of a stroke suffered Dec. 20.

He served as county district attorney from 1930 through 1942 and was a Superior Court judge from 1960 until his retirement eight years later.

He was born in Santa Rosa Nov. 5, 1898, to August J. and Jeanne Oriard Heckendorf. They came to Santa Barbara in 1908. He received his elementary education in local schools and was student body president at Santa Barbara High School when he graduated in 1919.

**HE ATTENDED** Stanford University, graduating in 1923 with a BA degree, and from Stanford Law School with a doctor of jurisprudence degree in 1928.

During his boyhood he worked to help support his family, selling magazines, serving as a chauffeur for various Santa Barbara families, and clerking in State Street stores. While at the university he played semipro baseball, a sport he carried into his leisure time during his middle years in Santa Barbara.

In 1926 he joined the law firm of Heaney, Price & Postel, engaging in legal practice until 1930, when he became district attorney. He resigned that post in 1942 to accept an appointment by Gov. Earl Warren to head the state Department of Professional and Vocational Standards, and to serve on the Governor's Council. He returned from Sacramento in 1946 to resume private practice here.

IN 1960 he was named to the Superior Court bench by



**PERCY HECKENDORF**  
Long career ends

Gov. Edmund G. Brown to succeed Judge Atwell Westwick. He retired from the bench Sept. 30, 1968, but was occasionally called back into service to preside over trials. He was hearing the Raef murder case at the time of his stroke.

Serving on the City Council from the Fifth Ward, Judge Heckendorf was chairman of the Water Commission during Norris Montgomery's term as mayor and represented Santa Barbara in the final adoption of the Cachuma water project. He was also active in local highway problems.

He presided at the trial of two swindlers responsible for the Embarcadero Estates land scandal in 1962.

Judge Heckendorf married Mrs. Louise Hall in the Stan-

## HECKENDORF

Continued from Page B-1

ford University chapel at Palo Alto in June, 1965.

**HE WAS** a member of the Elks Lodge, the Native Sons of the Golden West, Santa Barbara Club, University Club, Phi Delta Phi legal fraternity, Kiwanis Club, Olympic Club of San Francisco, the county Bar Assn., and the state Bar Assn. He served as president of the District Attorneys Association of California.

In addition to his wife, he is survived by three stepchildren, Mrs. Julie Meads of San Francisco, Mrs. Victoria Krend and Martin Hall of Santa Barbara, and two grandchildren, Carlene Meads and Julie Louise Krend.

**SERVICES** will be at 10 a.m. Saturday in the Welch-Ryce Associates chapel, with the Rev. Virgil Cordona, OFM, of the Old Mission officiating. Interment will be in Calvary Cemetery. Honorary pallbearers will be Judges John T. Rickard, Coleman Stewart, Charles S. Stevens Jr. and C. Douglas Smith; J. F. Goux, A. C. Postel and John E. Nordenson.

Friends may contribute to the Santa Barbara County Heart Assn. or the Memorial Rehabilitation Foundation at General Hospital in memory of Judge Heckendorf.





## FIRST IMPRESSIONS OF EARL WARREN

Fry: Maybe a good place to begin would be how you first came into Earl Warren's camp or vice versa.

Heckendorf: That would be in '31.

Fry: When did you become district attorney of Santa Barbara?

Heckendorf: I was elected in 1930. I took office January, 1931. I first met Earl Warren in June of 1931 at Wawona, at the district attorney's convention. He did not arrive there the first morning, but the next day --

Fry: You were watching for him?

Heckendorf: I was watching for Earl Warren because I'd heard so much about him and everybody was asking about Earl.

The 1931 election brought forth many new district attorneys throughout the state. Earl had been district attorney and before that a city attorney and an assistant I believe, in Oakland, part of that time. So, we were all looking for Earl. I wondered, What kind of man can this be, that he has so much influence and so much respect from all of the people who, some of us, had not been in public office before.

When I met Earl coming across the lawn through the main steps of the hotel at the convention, his broad smile just caught my eye. The Oakland delegation from the district attorney's office was present with him. From that moment on, to this moment, he's been my ideal as a public servant.

As district attorney, he immediately contacted all of the district attorneys throughout the state and kept in touch with them, until there was a real relationship between them. Finally,



Heckendorf: when Attorney General U.S. Webb determined that he was going to leave public service, Earl indicated that he would seek the office but he would not run against General Webb. At the proper time, the general determined that he was to leave office, and Earl filed.

That placed us in a very, very close relationship during the campaign. He met Mr. Tom Storke, who was the owner, then, of the News Press at Santa Barbara. Mr. Storke was a strong Democrat, but he'd been a supporter of mine from the very beginning, when I first ran for public office. He was impressed with Earl. He told me, "He's honest. He's a man you can see through; not a bad bone in his body."

From that moment forward until Mr. Storke's death, not long ago (on October 12 of last year. Earl Warren came and delivered the main eulogy at the memorial service for Mr. Storke,) -- all those years, they went to Europe together -- the families did, the Storkes and the Warrens -- and had great fun together, throughout their lives. They had both been very close friends and they highly respected each other. The last time I saw Earl here was at the services, and we had a short visit.

Later, I wrote a letter to Helen MacGregor, telling her how good Earl appeared to be physically, and how he usually made the remarkable, accurate statements about a person, which he did about Tom Storke.



## THE CIVIL DEFENSE PROGRAM AND JAPANESE SABOTAGE

### Statewide Organization

Fry: I'd like for you to give us a good overview of the development of the state of civil preparedness in California. Can you start with your awareness of the development of the civil defense program?

Heckendorf: One of the important things, in my opinion, that occurred during the attorney generalship of Earl Warren was the fact that in attempting to have uniform enforcement of the law, there are particular problems with respect to each locality of the state because of peculiar local circumstances, although the law is the same. Each section of the state had different local kinds of problems. That is why the enforcement of the general law became much easier for those of us in the various localities of the state, which had been set up by Earl.

Later, and significantly, these same groupings were able to assist when it came to the so-called Pearl Harbor affair, because then civilian defense was a matter to be contended with, a matter of not only protecting persons and property, but whole communities and sections of the state. Earl, through his experience with the peace officers, had held conferences at different levels of the state, and particularly one that I recall, the one that I presided at in San Luis Obispo on June 4, 5, and 6th of 1941.

Fry: Is that what you call the third district?

Heckendorf: Yes. Now, at that meeting all of the peace officers in this section of the state, in this division, were present. Oscar Jahnsen was one of our main speakers, and we also heard Gene Biscailuz, Andrew David, and Dick Hood, the FBI agent here, and the local district attorneys of Ventura and the surrounding counties.

We then learned the problems that were involved in the question





Heckendorf: of sabotage and the protection of property and persons. We spread those principles out in written form. The transcript was made of that particular proceeding.

Fry: May I ask one question? The speech that you just gave me,\* was that the one Warren delivered at that meeting?

Heckendorf: Yes. Each speaker had a specific topic to cover in civilian defense: bombs, fire bombs, air raids and all that. Each one took up the particular topic that was assigned to him.

Fry: Did the Japanese sabotage question come up?

Heckendorf: That hadn't come up in its full force yet. Later, there was this question of the Japanese bombing ships out here, off the Santa Barbara coastline. We prepared a civil defense setup for the city and for the county. Each of the cities within these nine different zones were given ordinances to enact, and we then organized our own civilian defense setup, based on the principles that were involved in the San Luis Obispo meeting.

Fry: Is this the point at which you prepared the map that I saw in the Bancroft Library?\*\*

Heckendorf: Yes.

Fry: Could you tell me about that?

Heckendorf: Well, after we met in Los Angeles and learned the principles that were involved in all of the civilian defense affairs, and the different stations, an ordinance was prepared that would fit the city and the counties. It was presented to them for adoption, and they were adopted and put into effect. Later in the period came OCD, the Office of Civilian Defense, which was headed by Mayor LaGuardia of New York. They had the uniform system to be put in operation throughout the United States. That superseded the local setup that we had at that time, so we made ours in the various zones conform to the OCD principles and signals and the like.

Fry: Now you have a scrapbook here called, "Camouflage Objectives, Santa Barbara County, California. Photographs."\*\*

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\* See Heckendorf Papers, The Bancroft Library, University of California, Berkeley, California.

\*\* See Collection of maps on the pre-evacuation locations of Japanese Americans in California, prepared under the direction of Earl Warren, State Attorney General. The Bancroft Library, University of California, Berkeley, California.

\*\*\* Deposited in the Heckendorf papers, The Bancroft Library, University of California, Berkeley.



Heckendorf: General DeWitt required all this information on behalf of each locality. So we photographed all the strategic areas that might be subject of sabotage: water lines, power lines, the gas lines, railroad tracks, railroad bridges, causeways, and everything that could affect the stability of the city in case we were attacked or sabotaged. We took pictures of all of these areas, all of the stations, everything that could be seen in case there should be sabotage.

After Pearl Harbor, the question came up as to what had been happening. There were some shootings off the coast here. There were some U.S. ships that were followed.

Each night the Coast Guard took the OCD men and our civilian defense group out to sea with no lights on to observe if any lights were showing. It was a complete blackout. Once in a while, someone would forget, let the shade go up and not pull it down, and that would attract attention. It was designed and policed so there was complete darkness. After that we noticed that there was a great falling off of any following of ships by Japanese submarines or others, off the coast.

On February 2, 1942, the meeting was held at the Bliss residence in Montecito at which Tom Clark, the assistant attorney general, Walter Lippmann, and Earl Warren and other civilian defense persons met. At this time, I presented a large map showing the various installations of electricity, gas, water and dams and roads and railroad bridges and the like, and their proximity to land owned or leased or occupied by Japanese.

It showed the strategic areas that could be sabotaged, wrecked, and cause havoc to the area involved. Mr. Lippmann showed great interest in the map and the significant things that were shown on it. Some of those specific items were shown also in the scrap book of pictures that we had made before. [Referring to "Camouflage Objectives, Santa Barbara County, California. Photographs.]

Later on Earl Warren and Tom Clark met in San Francisco with Oscar Jahnsen and a group of officers out of the civilian defense [department] in the basement of the state building, and we presented this particular map and another map that had to do with strategic location of objects that might be the subject of saboteurs in their particular areas.

Finally, the concluding incident we had was the attack by the Japanese submarine at Elwood, which is about eight miles west of Santa Barbara, where we had a group of oil tanks, containing each about fifty thousand gallons apiece, on the edge of the bluff.



Heckendorf: None of them were actually hit by the Japanese, but the shells were picked up in the foot of the first range of mountains, just beyond the railroad track and the highway. When I went to Sacramento following the attack, I had portions of shrapnel to give to some of the legislators and members of the board and staff.

Fry: What was the theory about that submarine? How did it happen to surface and shell such a target?

Heckendorf: Well, later, some time after the war, a considerable time after the war, the particular man who was supposed to be the commander of the ship was interviewed by the Los Angeles Times, I believe it was. He conceded that he was the commander of the ship. He didn't take much credit for his marksmanship because he couldn't hit a barn with a rake.

People stood on the shore. They saw the thing surface each time and fire the shells. He seemed to be in no hurry. Two days later, there were so many people from Los Angeles and surrounding areas that wanted to come to see this situation, that we just couldn't keep them out. It was a real attraction.

Fry: What about the immediate reaction to it? I should think that people would have been very frightened.

Heckendorf: Well, for the people living in the immediate area it was just a terrifying experience, because the submarine could come that close and not be detected. Then there was a time delay between the phone call to the army and the arrival of a plane from San Diego, the nearest area that could respond.

Fry: You mean there were no planes here at Vandenburg?

Heckendorf: No planes were available from the army or the air force, except down in San Diego, and that took quite some time.

Fry: So you were really vulnerable.

Heckendorf: That showed how vulnerable we really were.

Fry: Well, I've heard two interesting theories on why that place was shelled. What did the captain of the submarine say?

Heckendorf: I don't recall what he said. It's been so long. I don't recall what his reasons for that type of action was. Obviously, nothing in that particular spot where he was firing could have disrupted anything, except for the loss of the oil from that particular tank. There weren't any railroad bridges there, or any installations of any kind, except a gasoline station and that would be a





Heckendorf: very minor thing, from the war standpoint.

Fry: Are you sure that this was Japanese? Did you ever hear the rumor that it wasn't really Japanese, but it was American?

Heckendorf: Yes.

Fry: As district attorney, did you give that any credence?

Heckendorf: No; well, we heard that later. Later it came on that somebody wanted to shake us up to make sure that we were on the ball.

Fry: Buy war bonds --

Heckendorf: And all that sort of thing. It's just the same as when the Second World War came on. We'd have never been in it had it not been that we were attacked. Roosevelt needed that, but wouldn't bottle all the ships up in the harbor, like sitting ducks. It was incredible.

Fry: I want to go back and ask you one more question about your meeting. Can you describe more why you were meeting at the Bliss residence with Tom Clark, Earl Warren, and Walter Lippmann?

Heckendorf: I can't honestly say who set that meeting up. It's been so long.

Fry: Well, that date, February 2 - according to my notes, is when all the law enforcement officers met. Earl Warren had called a meeting with all of them. So, it might have been a different date, too.

Heckendorf: It might have been a different date, but it would be logical because Earl was the one who called these meetings, with Tom Clark and others, because Tom Clark was coming through the area. He was on his way north and this was an area that had been so set up. Earl was proud of it, and it had been functioning well. It was an example to the rest of the community.

So, I think that that's part of the reason that Mrs. Bliss, whose husband had been in the federal service -- was an ambassador to, I think, South America -- I can't remember the country. But that was the reason, in my opinion, and again I can't document that.

Fry: Well, was it after that meeting that you wrote the letter that I saw in the Bancroft Library in which you outlined to Earl Warren what you had told them about the danger of sabotage?

Heckendorf: I repeated that up in San Francisco at the meeting in the basement of the state building of the other group of northern civilian defense



Heckendorf: officers. I left my map with them at that time.

Fry: What was Lippmann and Tom Clark's reaction at the Bliss'?

Heckendorf: Well, they felt we were well prepared, that we were ready. They felt that if sabotage was to take place, they certainly had everything well covered. They knew the Japs would be in the position to know just where to strike, because they were in possession of these areas that were very strategic.

They did not have possession of all of those pictures in the map book that I have there now, but on the map the areas were shown where they were able to do very dangerous, destructive work.

Fry: As I remember, one of the main points was that there were some Japanese farms along either side of the road that came out of an army base. Do you know what I'm talking about?

Heckendorf: Yes. I'd say that's at Lompoc, sixty-five miles north of where Vandenberg base now is. It's a different base; they named it after General Vandenberg, who is now dead, an air force man. But the Japanese were predominately in the Santa Maria and Lompoc and Guadalupe area because it was vegetable growing area, a seed growing area. It was close to the sea and it was cool

#### Japanese-owned Land and Reparations

Heckendorf: The sad part of that whole story is the people virtually stole the good land from the Japanese, for vegetable growing and the like.

Fry: How could that happen legally? Why weren't these lands held in trust for them?

Heckendorf: Well, a lot of funny things went on. I'm not proud at all of what took place at that time. I represented some of the Japanese for claims against the government when they were returned here. I was then in civil practice. It was sad what they did, but again, General DeWitt was right. Constitutionally or not, he had to get the danger away from us, instantly. He couldn't take the chance.

Fry: The danger as perceived at that time.

Heckendorf: At that time. We've had no trouble with the Japanese who'd returned and settled. But they did lose some very valuable holdings.

Fry: Why couldn't they get them back?



Heckendorf: I couldn't answer that. Because these men apparently took their land, went through the legal process to acquire them. There has been some severe criticism in this area that they just gypped the Japanese out of their land, but I can't testify as to what they did to do it. It was out of my field.

Fry: But you were counsel to those Japanese who were trying to sue the government for the return of their land?

Heckendorf: Later, after I got out of government work and returned to civil practice, some of the Japanese started to filter back. The first thing that they wanted to claim was the damage they had suffered, [the losses incurred on] the land that was not taken from them, the seeds, the planting, the crops, deteriorated machinery and the like. The government paid just compensation to them for it. That part was all right. But these shilly-shally deals where these men actually acquired the land from the Japanese, I can't testify as to just what they did do to acquire the land. It was a scandal, just the same.

Fry: When the Japanese returned, did you have any fears of retaliation by the community against the Japanese?

Heckendorf: No, I don't think we had very much feeling here, because actually, nothing had really occurred, by way of sabotage, that was of any significance at all, other than that ship firing at the land.

Fry: And that was warfare, I guess, not sabotage.

Heckendorf: We've had a good relationship with those that have returned. I suppose the scars of the war on their side are so deep that they'll never forget it. But we've now given Okinawa back to them, so things are levelling off.

Fry: It takes a long time, doesn't it?

#### Civil Defense Under Governor Warren

Fry: The fight that Warren had with Governor Olson on civil defense must have had some ramifications on the local level.

Heckendorf: Well, the reason Earl Warren, in my opinion, was willing to run against Governor Olson in 1942 was the brute fact that Earl had so organized the state through these various committees, from the Mexican border to the Oregon border, that he was prepared for civil defense, and he could not receive state cooperation from Governor





Heckendorf: Olson in whatever he [Olson] was trying to do, if anything, for civilian defense. The very thing that Earl had prepared himself for in college and in his life was to protect property and persons, and that was the thing that he was being deprived of, and his abilities were being lost to the state.

He concluded that the only thing that he could do was just to take the governor on. He did and he had a remarkable victory and he proved himself. When he became governor he organized the state civil defense council, and these same gentlemen who had come through the ranks in his various organizations of district attorneys throughout the state and in the local disaster programs, became members and organizers and parts of the civil defense state setup.

Further, under General DeWitt and General Delos Emmons, Earl Warren was able to send a man from the state council to cooperate with the army and keep it advised of state activity. As secretary to the council Earl Warren designated me to work with Victor Hansen, who was a general and who was an understudy of General DeWitt and also General Delos Emmons, who followed General DeWitt. He would go up and down the state and see what could be done by way of assistance to each area in their particular problem. [We would] keep in constant touch with them. He received full cooperation at every level.

Fry: I am very impressed with all of the material in your scrapbooks that shows how much work had been done before Pearl Harbor.\*

Heckendorf: Well that was the point of the thing. Earl Warren as attorney general, in charge of all of the district attorneys, supervisor of all of them, assisting them with their legal problems and with their civil problems, now took upon himself, as the crisis arose, to begin to prepare them for a new crisis, a new civil [defense] thing that was arising. He had the entire state prepared and organized.

So the next step was to take it to the state level, and he did that in magnificent fashion when he appointed the war council. You've seen their work set forth in these minutes. Again, [I want] to impress upon you the fact that the same men he had trained in these nine zones just filtered right to the top level. There they were, again, in Sacramento. Well, that training, his foresight, seeing this disaster here and seeing nothing done at the state level -- it was a revelation to all of us to see him take the reins and be able to go forward and tie up exactly with the army.

One further development took place when General DeWitt and Gener-

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\* See Heckendorf Papers, The Bancroft Library, University of California, Berkeley, California.



Heckendorf: al Delos Emmons required that the state of Washington, the state of Oregon, and the state of California appoint some one person to represent the governor from a civil standpoint. Warren appointed me to that position. So for California I represented the governor with the army. That was one of the reasons why I was always on tour with General Delos Emmons who was represented by Victor Hansen and General DeWitt's deputy, throughout the state.

Fry: Oh, Victor Hansen was Emmon's representative?

Heckendorf: That's right. He was first under DeWitt and then under General Emmons. Hansen was later on the Regents for the University of California, a U.C.L.A. man.

Fry: Didn't he help in Warren's campaign for governor in '46?

Heckendorf: Yes. He was baseball player, by the way.

Fry: A baseball player like you? [Laughter]

Heckendorf: For U.C.L.A. He was a good man, a wonderful man. All the men of Warren's war council, all of them, were outstanding men.

Fry: When were you appointed to that? Now, was that before Pearl Harbor?

Heckendorf: No, it would be after it. The Western Defense Command needed one representative for each of the states from the Canadian border down to Mexico, just three men to keep in contact with the service so we'd know what was going on.

Fry: That certainly put you in a position to know. You were aware when the submarines sank those two ships at San Luis Obispo on December 23 and 24?

Heckendorf: Yes.



## EARL WARREN'S REFORMS IN THE ATTORNEY GENERAL'S OFFICE

- Fry: Let's go into Earl Warren's 1938 campaign for attorney general and his reorganization of the attorney general's office. He had had his eye, I think, on the attorney general's office for quite some time. Is that your impression from what he told you?
- Heckendorf: Yes, it is. He had concluded that his relationship with the district attorneys was such that he was the logical leader for them, and he felt that the attorneys at this district attorneys' level and county counsels' level wanted Earl to become the attorney general.

General Webb was a good attorney general. However, Earl had seen a lot of things in the state that could have made it more of an active office, and so he concluded to reorganize the office. He mentioned to General Webb that he would like to become the attorney general and intended to file when the general retired, but he told General Webb that he would not oppose the general. With that understanding, General Webb said that he would let him know if he retired.

In the interim, Earl wanted to set up a reorganization of the entire investigative staff of the attorney general's office, and to make it an office that would be fully active throughout the state. That's exactly what did happen, and when he became the attorney general, after the final election, after the retirement of General Webb, he was the real leader of the state in law enforcement. He was a great help to all of the then new district attorneys.

The efficiency of the office became apparent immediately, supplying the district attorneys and the county counsels with opinions right away to sustain their point of view or to cause a different point of view to be issued and reconsideration of the entire problem that was then before them.

It was a great improvement. The district attorneys, I'd





Heckendorf: say, were for it because it was a help to them in the enforcement of the law.

Fry: Did you work on the passage of the referendum to reform the attorney general's office?

Heckendorf: The district attorneys sent letters into the legislature and all that. They were for it.

Fry: And then it had to go on the ballot.

Heckendorf: That's right. We all had a part in it, but it was Earl Warren's thinking and his planning that actually went into the reorganization of the department.

Fry: What amazes me, looking at that legislation, realizing the backing that Warren had from all of the law enforcement community, is that it calls for the attorney general to have the power to step in and take over law enforcement in the local community if need be.

Heckendorf: Well, there were a lot of arguments. We had to face a lot or arguments on the question of what kind of man goes in there with that power. Is he a balanced one? Is he one who understands it? [If he was a] law enforcement man, the man who went in there with that power could do anything, [and be] very disruptive. But, it was Earl Warren again, his personality, throughout that whole bill, and in the setup of the attorney general's office. So, again it was confidence, confidence of the voters. Oh there was always opposition. You'll always find people are willing to chisel here and there, and a lot of people just want their own way and they don't want anybody to get over them. But the voters had confidence in Earl. That's the answer to the whole thing.

Fry: Did you have any dissenting district attorneys on that?

Heckendorf: I can't recall any, no. I can't recall any.



## POLITICAL CAMPAIGNS

### The 1948 Campaign

- Fry: Well, if I could switch gears a bit, I'd like to hear about your involvement in Warren's campaigns. What was the first political campaign that you helped him with?
- Heckendorf: The first one, he ran for attorney general and then governor. There were three of those campaigns. Next was at the national level, I think, when he was running for national office, in '48.
- Fry: What was your role in that?
- Heckendorf: I was one of the delegates at that time to the convention at Philadelphia. But, I had a severe attack of the flu at that time, and the physician would not let me leave so, Attorney Mullen, who was an army officer, went to the convention in my place.
- The trouble with that ticket at that time was it was just headed by the wrong man. Dewey was a good man, all right. He was an eastern establishment man. He didn't make a mark in the West at all, and this is where the thing turned.
- Had the ticket been with Warren at the head of it and Dewey the second, I'm as positive as I can be, it would have been a successful ticket. I'm sure as the head of the ticket Earl would have compelled the national committee to allow the ticket to attack the things that were said by Truman, as the [Truman] train went up and down the tracks calling the Republicans everything under the sun. But the ticket was headed by Dewey, though they [Warren and Dewey] did return to the East again to meet twice, I believe, with the head of the party to state that something should be done to counter what Truman was doing.
- Fry: Who felt that?



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 ALTMORE HOTEL LOS ANGELES MAY TWENTY FIRST FOR DELEGATES  
 D ALTERNATES IN NEIGHBORING DISTRICTS TO ENABLE THEM TO  
 COME ACQUAINTED IT IS NOT A BUSINESS MEETING WOULD BE HAPPY  
 HAVE YOU WITH US WILL GATHER AT HOTEL AT SIX OCLOCK  
 DLY ADVISE REGARDS=

EARL WARREN GOVERNOR

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Heckendorf: I think that many of the men on the Republican ticket did. But I'm not too sure of Dewey. The committee in charge of the Republican ticket in the East, the eastern establishment, they would not allow this. They said, "We've got this made," and would not allow attacks to be made on Truman.

Fry: They thought everything was fine. Are you telling me these were western men who wanted to reply to Truman?

Heckendorf: That's right. The eastern men controlled it. That's the way it looked to me, and the way it turned out to be. Had Earl been the head of the ticket he would never have stood for that type of management at all. He's too realistic.

Well, that's one of things that I think is unfortunate.

Fry: Were you in touch with Earl Warren during that campaign to get his reactions to what was going on?

Heckendorf: No, not too much. I wasn't too much in touch with him. We talked by phone, talking about the delegation and all that, but I don't recall that he was here very often.

Fry: I meant by telephone or otherwise. I just wanted to establish that you had talked with him.

Heckendorf: Oh yes. When it became a question of a delegate, I felt -- I had been with him at Sacramento -- I felt that an army man was now the one that should go in with him on the delegations. Then this fellow Mullen, who was a lawyer here and a very good friend of Earl's, a very reputable man, I felt that he should go for that vote.

But Earl said, "No, you've got to go." (It was probably my organizing ability and so forth that he had been subjected to during the years.) He wanted me to be there, but unfortunately I became ill and couldn't make the trip, so Mullen actually made it.

But I think that was a mistake the Republican party made. The eastern group would not allow them to attack the man [Truman] who eventually became a success, on the ticket.

#### The 1950 Campaign and Social Legislation

Fry: When did you appear in Earl Warren's political scene after that? Were you involved in his governor's race in 1950? That was when he ran against James Roosevelt.



Heckendorf: Oh yes. We were right up to here in that. [Indicating his eyebrows.] He [Roosevelt] was phoney, anyways. Earl was too deeply involved with the state. People knew him. He ran in '50 -- was it '50? When did [Goodwin] Knight run? I handled Knight's campaign here, too, [for governor] after Earl went to the Supreme Court.

Fry: That would have been '54. What did you think about Jimmy Roosevelt's campaign? Did you ever feel at the time that this was a serious challenge?

Heckendorf: No. The only thing -- I closed my eyes, and his voice just sounded like President Roosevelt's. Franklin Roosevelt just charmed people. That Democratic ticket from [the] Chicago [convention] when he flew down from Albany in '32, that platform was as good a Republican platform as you could have had. But Roosevelt just met the conditions as they were and he just twisted around and was still going in that direction. Nobody would dare wipe out any of those bills.

Norman Thomas, I've heard him many times. William Jennings Bryan used to come here with his Chautauqua tents and he'd always go like that when he made a point [hitting his hand with his fist]. He was quite a fellow. Norman Thomas was a good speaker. Thomas was always last, but he kept running, running, running. But every-time, every year, one of his bills would be adopted.

When Franklin Roosevelt delivered one of his speeches, he was dynamite. He sort of paralyzed the people when he got among them. He was a great charmer. But what would you wipe out? Nobody would dare monkey with any of those social bills, the Wagner Act, and so on. So, now we're in that direction, and I think Earl, if he were in the presidency today -- and I think everything that I wrote in those letters,\* and what Jim Oakley and I talked about, [is true.] We wrote it to Earl, what we felt. [We said] if he were in the White House today, his feet would be on the ground. He's a realist. He's a man who could see things from a realistic and practical standpoint. He could make these social bills work and be acceptable, which I don't believe could be done now.

We have a horrible conflict on. Nixon is bound to go back in [to office]. I can't see any of the Democrats that can win, even Kennedy. But Nixon has become more liberal.\*\* He has adopted many of these things, and I'm sure that Earl, who has exhibited his understanding of the sociological problems of this country, could meet them in such a way that it would be acceptable to what we call the

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\* See letters in appendix, Heckendorf to Warren, June 5, 1946, and September 3, 1946.

\*\* This interview was recorded in 1972 before the Watergate break-in took place.



Heckendorf: establishment.

Because it's [social legislation] in there now. It's part of the game now. You have to go out to meet your [tax] responsibilities before you can make your profit. You've got to cover these expensive things that are going on now, that are hurting the people.

That's why the young people today, I'm sure, object. They have been taught so many ways that loopholes exist for wealthy people to escape taxation, their responsibility. Business has tried to do it to make a profit. But they're now beginning to recognize that they owe a responsibility, whether they're destroying these streams and lakes, and the pollution in the air, and the like.

But they're putting that in as part of the expense part of the cost of doing business. Well, we can avoid those things. The same with the automobile world, which is the basis of this country, practically. From the machinery and the industrial standpoint, they've now come to meet it; they've got to meet it. It's hopeful that they [automobile manufacturers] can put that forward as a part of the cost of operation, so, stockholders will know why they're not getting bigger dividends like they expected to have and have been getting in the past.

Fry: To prevent smog.

Heckendorf: It's part of the operation. They caused it, now let's prevent it. Call that socialism, call it whatever you will. It's still a thing that man to man and woman to woman, you've got to get along and not hurt other people.

I think Earl Warren has that ecological philosophy on the case that he's working on.

Fry: I wanted to ask about something you just mentioned. You felt that if Warren were president now, that he could accomplish all of these changes without alienating the power structure in the society. Why do you say that, because he did alienate the powers in the Republican party when he was in it.

Heckendorf: Well, that's all right. He alienated, perhaps, some of them, some people who had what we call an axe to grind. But looking over the whole scene, he could manage this economy with socialism or whatever you may call it, so responsibly, make it completely responsible. He could make it acceptable as well to those that would be compelled to pay for causing these difficulties, as a part of doing business,





Heckendorf: so that you're not playing one group off against the other.

Earl has got the innate ability to be able to calm both sides and bring them together. See, he can do that. He can do it in the most economic way, and I think now that if he had forty more years to live and he were in the presidency, he could do this, because I feel Nixon coming back [for a second term] and then his term to be over. He's going to have an understanding in Washington with China. I think the world is coming to a point where there's going to be better living. I'll not see it, not my generation.

I think Earl is the key, the only one who's outstanding, who's straightforward, that you could rely upon. He could meld these people together, if you can use that term. I think we could get places. I keep coming back to those letters I wrote with Oakley, and that was way before he ever got onto the Supreme Court.

Fry: He did have some opposition develop here. In that intriguing fragment of a letter that you have from Mr. Storke (which we must include in the transcript), Storke mentions the men who want Warren to run for Senate. He seems to be saying that they just wanted to sidetrack Warren because they didn't approve of the way he was running the governor's office.

Heckendorf: See, if Warren were in the Senate, he'd be watered down. From a realistic standpoint, he has to be at the governorship, or presidency, or the chief justice of the United States. He's a leader. What he did in the Brown case and thereafter is remarkable.

The same thing [problem] now, in a greater sense, when you're getting so many voters, [who has] the ability to get the whole people to understand what's good for them, from the economic standpoint, from a political standpoint, aside from the law? Warren had that experience.

Now who's got the ability to do that? Who would they have confidence in? It's true that some people are posing. That's all right. We have to bear with it. But he is the only man that I can see in the whole scene, now, of all these politicians who are on the legislative side, trying to move into executive positions. Earl has it. He's got the ability. I've seen him do it.

This record that you've seen today is proof in the pudding. He knows what to do when a crisis faces him, if it's long term or it's short term. He can face up to it.

Fry: One thing that seems to be repeated in a number of state problems and departments is Warren's ability to see what to do before the crisis comes. This is one of the things that seems to be emerging



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The election is a year off and a lot of water can go over the dam in the meantime. You may have time to have the voters see you in your true light. You have made a good governor. What a pity that a few charlatans would destroy a good man.

You have a lot of friends. I don't believe any of them are in the group of "big money boys".

They don't want you to be senator, if they did, why did they attempt to ruin you, a good governor.

It doesn't make sense.

Kindest regards to you and Virginia.

Sincerely,

T. M. STORKE

TWS!bc



Fry: from the study, if I may be permitted a conclusion.

Heckendorf: That's right. He's able to see it.

Fry: Apparently this letter was written a year before a senatorial election.

Heckendorf: He [Storke] used to always call me. He'd give me copies of letters because he knew how close I was to Earl, as Tom was devoted to Earl himself. That's the way he worked.

Fry: I still wish I knew who these "charlatans" were that he was talking about.

Heckendorf: Well, they wanted to short circuit, I guess, the governor, and put him where he's just one of a great number in a body, and he can't accomplish much that way. You just can't. Now, I can't find that page one, I've looked everywhere. I can't remember what the occasion was that he wrote that.

Fry: Well, I hope that we'll be able to get Mr. Storke's papers for the Bancroft. If we can get his correspondence papers then we'll have his copy of this letter.

One of my questions is -- I'm grabbing at two straws here and trying to put them together -- were the men who were trying to push Warren into the senatorship, were they part of the oil interests? I'm wondering if they're part of the same group that are now disenchanted with Nixon.

Heckendorf: I can't say who they are. But I know it's a group who wants control.

Fry: Of the candidate?

Heckendorf: Yes. They've got to have control, no matter who they put, they've got to control that fellow. Its just like [lobbyist] Artie Samish used to say to me, "I just need about three or four men in there, and I let them go all the time, but when I need their vote, it's there; I can depend on it." That's why he raised hell and banged on all the doors that night when we put the Board of Equalization in the Administrative Procedures Act. We didn't do it. The legislature was just going to say what was right.

Your second question was what?







Santa Barbara, 29 August 1945. Left to right: Earl Warren, T.M. Storke, Dwight Murphy  
Percy C. Heckendorf.



The 1952 Delegation

Fry: My second question was about the 1952 campaign train. I know you weren't on it, but that you know about it.

Heckendorf: Yes, Nixon got on at Denver. And that mandate here in '52 was Earl Warren; the delegation [was pledged to him.]

Fry: The delegation mandate.

Heckendorf: Yes, it was for him. Well, what happened was Nixon looked at this thing, and said, "Well, I'm from California and Earl's from California, and you can't get two of us on the same ticket. And here is Ike, the prominent general, he's in the East and I'm in the West. What could be more natural?" He started a guerrilla warfare. That's the thing that hurt Earl, from a personal standpoint, [coming] from a man [Nixon] who'd been in the same party for so many years, and worked on the same team, so to speak, as Republicans. Here comes a man pledged to Earl, and then starts to gut him, so to speak, by campaigning behind his back. I know how Earl feels. I know how he felt about it. I know how I would have felt. I couldn't have taken it without slapping the guy in the face, or saying something that I'd be sorry for later.

But Earl went on. He just paid no attention to the fellow after that. I think the size of Earl and his respect for the country was exhibited when Nixon finally called him and asked him if Earl would swear him in as President of the United States, with Earl being the Chief Justice. He called the office. [Earl] could have damn well told Nixon to go to hell.

Fry: Could anyone else have sworn him in?

Heckendorf: Anybody. That same thing happened in California here when Reagan was sworn in. The [California] chief justice was always the one by custom to swear in, but he called the court's minority man, McComb, to come there in attendance after twelve at night and swear him in. He ignored the chief justice, whom he wanted out, a California man, a very brilliant one, one of the best chief justices we've ever had, Roger Traynor. He was in my class, except that he was on the other side of the Bay.

Fry: You were Stanford, and U.C. was Traynor's campus?

Heckendorf: Yes. Earl was just that big. He'd forgotten Nixon, he'd forgotten Denver.





Fry: It was the chief justice swearing in the office of the president.

Heckendorf: That's right, the president. When [Warren] looked at [Nixon], it crossed his mind that this fellow here -- but I won't tell you what he'd think of him. But at any rate [Warren] respects the office.

Fry: But you do know that Warren was hurt by Nixon's behavior on the train? Did Warren mention this to you?

Heckendorf: I can't say that he did, although I have a feeling that he did say to me that it was a horrible thing for a man to do who is under an obligation with a mandate from the people. But I can't honestly say where this came from. I know his feelings, and if I'm wrong, I'd be terribly surprised. Earl doesn't live that way and he treats his people -- as I say, when he took us into office, first of all he introduced all the people, the press, and the like. To ourselves, he'd maybe said, "I'll not tell you what to do; [although] there will be some things that I'll want to do, but the law lays down your obligations to the jobs you have. Don't forget, wherever you make a mistake or commit any bad error, it'll be charged to me, so remember that you are the governor's staff, and whatever you do will hurt me."

The other side of him was that he never looked for praise at all, in editorials or the like. He never looked for praise; we always looked for editorials that would say that he was doing something wrong, going in the wrong direction. We would immediately want to pick that up, and then he would pick that up and correct it if he was wrong. If he was not wrong, he could explain that to them.

That was why he was so constructive. I'd say that he could feel the level of the people and make them feel, "This is my man." That's why I think now, with this thing going on, with these socialized things becoming law, he would be the man that could put them over better than anyone I know. He could bring them together, and unify the nation.





THE DEPARTMENT OF PROFESSIONAL AND VOCATIONAL STANDARDS  
AND THE ADMINISTRATIVE PROCEDURES ACT

Fry: Why don't you tell about how you were appointed to the Department of Professional and Vocational Standards?

Heckendorf: In the late autumn of 1942 I received the first notification that I was being considered for that position. Earl telephoned me from his office in San Francisco. He was then ending his first term in that office [attorney general's and running for governor]. And he told me to look at the political code sections that covered the Department of Professional and Vocational Standards. They set forth all of the boards and bureaus that were within the department. Among them was the Department of Cosmetology and Hairdressers, and then the Bureau of Bedding Inspection. Earl said that he wished me to combine those two departments.

Fry: Bedding and hairdressing? [Laughter]

Heckendorf: Yes. He had a great sense of humor, and he laughed, and we just got a great kick out of it. I must confess that I failed in that duty. He had a great sense of humor.

Well then he told me to consider that for several days, and he said further, "Now, you've both been in office for three terms and you've been elected for the fourth term and you can't be forth-termers." That has a reference, jokingly, to the fourth-termers, the President of the United States at that time, Roosevelt. In all events, I checked it over and asked him what in particular was it that was of interest to him? He said that particularly the development of a department of administrative procedure, affecting all of the licensing and regulatory agencies of the state.

Prior to that time, there had been a soft-tooth type of thing, just go up and down as to what the regulations were. No two were alike. He felt that it was unjust. That was one of the main objectives that he had, to straighten that regulatory matter out.





**IN CABINET** — Dr. Wilton L. Halverson, Los Angeles, to be State health chief.

## Three State Posts Filled

**Los Angeles Health Officer Picked by Warren  
Garland Also Appointed**

SACRAMENTO, Jan. 3. (AP)—Gordon Garland, outgoing Speaker of the Assembly; Dr. Wilton L. Halverson, Los Angeles County health officer, and Percy Heckendorf, Santa Barbara County District Attorney, were named to important State Cabinet positions by Governor-elect Earl Warren today.

Garland, Woodlake Democrat who broke with Governor Olson and became leader of the anti-Olson economy bloc in the Assembly, will become State Director of Motor Vehicles, succeeding James M. Carter.

### STATE HEALTH DIRECTOR

Dr. Halverson, Los Angeles County health officer since July, 1940, will become State Director of Public Health, succeeding Dr. Bertram Brown.

Heckendorf, past president of the District Attorneys Association of California, will become State director of professional and vocational standards, replacing Dwight Stephenson.

### PAY \$6000 YEARLY

All three jobs pay \$6000 per year. Garland and Heckendorf will take office immediately after Warren is inaugurated tomorrow but Dr. Halverson may not arrive here for two weeks.

The appointment of Garland boosts the Woodlake Democrat back into the political picture after a surprise defeat last August. He declined to seek re-election to the Assembly in order to run for membership on the State Board of Equalization from the Second District, but was defeated by Ivan Sperbeck in the Aug. 25 primary election.

### WARREN STATEMENT

Regarding the public health directorship, Warren said:

"After consultation with many people who have devoted study to public health problems, I have no doubt but what Dr. Halverson is one of the outstanding public health men in the country. He will be entering State service at a personal sacrifice, for in his present position he is a Los Angeles County civil service employee."

Dr. Halverson previously had been Pasadena health officer and received his public health training at Yale University.

Heckendorf has been Santa Barbara District Attorney for 12 years. He was born in Santa



Percy Heckendorf

Rosa, attended Santa Barbara schools and Stanford University.

Garland entered the Assembly in 1937 and served as Speaker through five special sessions in 1940 and the regular session in 1941.

## Los Angeles Times

# Warren Will Be Inducted Today

**Houser and Other State Officials to Take Oaths;  
Legislature Will Convene**

Continued From First Page

Supreme Court by the Governor, will administer the oath to Warren. This will be followed by Warren's inaugural address.

Gibson will then administer the oath to Houser, who will speak briefly.

Prior to the inaugural ceremonies, both houses of the Legislature will meet at noon and organize. In the Senate there is a lively contest on for president pro tempore between Senators William Rich, who held the post at the last session, and Jerrold Seawell, who held the post two sessions ago. Each claims the votes necessary to put him in.

### LYON LIKELY SPEAKER

In the Assembly, the election of Assemblyman Charles W. Lyon, oldest member in time served as Speaker, is a foregone conclusion. Assemblyman Thomas Maloney of San Francisco, another veteran member, claims enough votes to be elected Speaker pro tempore. Assemblyman Earl Desmond is also after the job.

Lyon has been here for a week working on the selection of committees. Assemblyman Sam Collins of Fullerton is on the books for floor leader.

In this session the Republicans will hold a majority, not large, in both houses. Lyon has said that in the matter of committee appointments the Democrats will fare better than the Republicans did under the Democratic regime.





Fry: These were all regulatory agencies?

Heckendorf: Yes. There were some thirty-six of them altogether. Sixteen in the department. But there were about thirty-six in the state. Some of them were constitutional; you couldn't touch them. They were independent, responsible only to themselves, really. They do as they please. Earl was concerned that you would have a fair hearing, that for all persons who would appear before the board to secure a license or revocation or punishment of any kind, there would be a fair hearing.

Many times -- the medical examiners board is an example -- they'd have a hearing, and then they would go into what they call an executive session. The executive session -- I've seen the doctors pull out of their pockets a piece of newspaper write-ups about what they had heard about the particular man who was being charged with a violation of the Medical Practice Act. The vice of that thing is, the defendant, although he may have committed a misdemeanor or crimes before, he was then not confronted with this record. He didn't know what the board was considering. That was a very harsh thing to face in reality.

Fry: He didn't know what he was being accused of.

Heckendorf: He didn't know what he was facing or being accused of, or what he was being punished for. He was charged with one thing, but other proof was coming in.

That was finally worked out through the Administrative Procedure Act, to eliminate that.\* Now, we had a feeling at the start of it that maybe we could do this by rules of the board. But, the Chief Justice --

Fry: That would be just an administrative change?

Heckendorf: Just an administrative rule, which would change it. We could do it with many of them. We were able to do it because they went by rule.

There were many others, however, who had that procedure glued in through legislation, and therefore would have required a complete leveling by the legislature of those acts, and the implementation of what we were proposing by way of statute. Therefore, we were in the position of having to study each board and meet with each board

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\* See Appendix: Kleps, Ralph N., "California's Approach to the Improvement of Administrative Procedure," reprinted from California Law Review, Vol. 32, December, 1944, No.4, pp. 416-426.





Heckendorf: throughout the years, telling them what we hoped to do, what we expected to do, and what part of the procedure act should apply to the particular board involved.

We took all of those boards in succession. We met with them. The chief justice of the state Supreme Court met with them and Warren met with them and Mr. Kleps was always with them. Kleps at that point was merely working under the chief justice, because the state bar and the Judicial Council and the attorney general's committee on administrative procedure and the Benjamin Report\* in New York were involved in this procedure. The federal government had already set up an administrative procedure.

So we patterned our procedures, generally, after those two reports. But, before that came into play, we had this problem of having to introduce legislation to accomplish our objectives. That made the job somewhat slower.

A lot of time was required to meet with each particular board and secure their support for what was to take place with respect to that particular board, and what part of the act would apply to their function. If we did not secure their permission and support in the first instance, we would have met terrible objections in the legislature. One or two objectors there could void the whole program.

#### The Alcoholic Beverage Control Board

Heckendorf: Things progressed to a very satisfactory stage until we reached the question of the Alcoholic Beverage Control board and that was under -- [Pause]

Fry: It wasn't William Bonelli then?

Heckendorf: Bonelli was on the board, George R. Reilly from San Francisco was there and there was another man. Well, at any rate Ralph Swing, the senator from San Bernardino, appeared before us, and he stated that the Alcoholic Beverage Control board knew that they had a problem of the regulatory agencies type, that Mr. Warren was trying at that time to correct it. But, he said they had some bills in, procedural bills, before the legislature, which they felt in all fairness should be given a fair chance to have it tried and see if it will work.

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\* Benjamin, Administrative Adjudication in the State of New York (1942).



Heckendorf: We were skeptical that that bill would meet the requirements that the governor was trying to accomplish.

Fry: Right here, can you insert what the governor's objections were to the operations of the Alcoholic Beverage Control board, and then what the control board's objections were to your bill?

Heckendorf: The Alcoholic Beverage Control, as it had been in operation up to this point, and including the proposed bill, was unsatisfactory to the governor, to Mr. Kleps as well, and to the chief justice, Phil Gibson. But the question was that they had introduced this particular procedural bill. Now, what the details were as to its component parts, I can't tell at this time; too much time has gone by.

Fry: There had been several efforts before this, according to our records, to take it out from under the Board of Equalization.

Heckendorf: That's right. It was wanted out because that board was in disrepute throughout the state. Well, the upshot out of this whole thing was that we met several times with the entire committee of the senate at the Sutter Club -- we took them to lunch.

Fry: Which committee was this?

Heckendorf: Of the senate. Took them to lunch. The sponsor of the bill for the governor was Senator Tony DeLap. (That was the name I was trying to think of.) He was the fellow that presented the bill.

I remember Senator Swing saying, "You want a bill, don't you?" And I said, "Yes, we do." The governor wanted a bill. We had to get an administrative procedure bill through. Senator Swing said the alcoholic beverage control board already had a procedure bill before the legislature. "All right," he said, "If our bill cannot be allowed to become law, you're not going to get an administrative procedure act as to all the rest of the boards."

So, the end was that Governor Warren would not make any compromise with any of those men. If the legislature saw fit not to enact the bill, we were not going to make a deal with any of them to get the bill passed. That was my position, and Mr. Kleps' position, and that of the governor.

As time went on, and these boards had had their meetings, each one of them, and they were all happy with it, the question arose as to the medical board. That was one of the strong professional boards of the state. They were very jealous of their power. Many of the doctors had been in the service. There had been about eight thousand doctors here at the time who had returned to California,



Heckendorf: and they did not want to have anyone absorb any of the power of the board. The board had acted, as I say, with evidence against people who were charged with violations, by bringing in extraneous evidence that the poor defendant could not know about, nor his attorney. That was what we hoped to clean up.

Well, the medical board finally, after the act was adopted, became the first one to use Mr. Kleps, who was appointed the head of the department. It was a very difficult case, and he sat with them. He ruled on the evidence. They were so pleased with that procedure, that they never had any objection thereafter.

Before we started the procedure act hearing -- this thing is important to know -- there was a transcript of the hearings from the time when Mr. Warren was the attorney general. He had to supply deputies to these various boards from the attorney general's office, to advise them what their rights were, and what procedures should be followed. About half of the boards had their own private attorneys that they could hire. That was wrong in principle, wrong because the attorney depended upon the board for his salary and his position, and he was apt to make a slanted ruling; self-preservation in there. With the attorney general, [the law] could be uniform in its application. We owe nothing to anyone.

In the particular department that I was in, I studied this transcript and learned what had happened to most of those boards. They each have a confidential position or secretaryship; they can appoint one person without reference to civil service.

The man who formed the CSEA, the California State Employees Association, was in a glued-in position. They had put it under civil service. His name was Fred Taylor. Many times they would take these exempt positions and force civil servants into it. When the complexion of the board changes, you want someone with confidence because you are making policies and changing rules and so on. But that was a mistake made by the CSEA, trying to take the exempt position and put a civil servant in there, unless that servant was one that the board wanted. So, we were faced with that.

Then, as time went on, we removed as many of the private attorneys as we could, not all of them, but as many as we could, with the hope then that it would be placed back to the attorney general's office in the Administrative Procedure Act.

Fry: What senate committee was that in front of? It must have been Governmental Efficiency and Economy, was that it? Or would it be the Judiciary?





Heckendorf: I honestly can't tell you the name of the committee, the big committee.

Fry: Do you remember who was head of it?

Heckendorf: No, you'll have to get that from Tony DeLap.

Well, after these hearings were held and we had formulated the act -- it was formulated really into three actual divisions. One of the first divisions was the Administrative Procedure Act itself, and the second division was the Division of Administrative Procedure, and the third was the matter of judicial review. Up to that time, there had been very much uncertainty. The act itself did clear up this matter of review, the question of whether it would be mandamus or certiorari, or what. Finally, the act itself set the method of review up in division three.

But as we went on, a very interesting thing developed. We would not make deals with any of the members of the legislature. Finally, at the end, it appeared that there was a division in the legislature. Some of them felt that the ABC [Alcoholic Beverage Control] board should be in. We would not say, except that logically it belonged in. But they had their own act before the legislature and they said it would perhaps cure the defects in the ABC procedure. In equity, they were entitled to have a chance to try it, to see if it did work.

Fry: Their act did what? Do you remember?

Heckendorf: I don't remember just what its act did, no. It was a procedural act that purported to do away with inequities and so on, in the administration of the licensing and the revoking of licenses, you see, by the ABC Board.

We wanted to have our act passed, setting up the department and the pool of hearing officers. So, toward the end of the session (and Artie Sam sh was in strong control of the legislature at that time. He had more power than the governor did in many respects, actually, he really did. He had control of certain things, which was very sad thing in the state.)

Fry: Where was his power besides in things that pertained to liquor interests?

Heckendorf: His power was through the legislative speaker of the lower house, and appointing committeemen in the senate, and appointing the chairman of the committee.

Fry: Was one of his committees the Committee on Public Morals?



Fry: That seemed to be the graveyard for bills to change the Alcoholic Control Board --

Heckendorf: I don't know if you could name it public morals; I'd have to have a look to see what the committees are.

In all events, when the vote came up on the bills, Senator Tom Keating asked me if we had any deals with the liquor control Board, and I said, "Absolutely none. We've never made any deals with anyone." We had learned, Mr. Kleps and I had learned, and the governor's office had learned, that there would be an attempt made to put the Alcoholic Beverage Control in the Administrative Procedure Act. We would have nothing to do with that, to put it in or to take it out. We felt that logically it belonged in, but we felt that the legislature could do what they wanted. We never turned the heat on anyone.

Fry: But somebody was going to try to put it in?

Heckendorf: Somebody. Mary Ellen Leary had two articles, I think, in the San Francisco paper [The San Francisco News] that an attempt was going to be made to put the board in.

Fry: In spite of Samish's effort.

Heckendorf: In spite of it. So, they had the showdown. They voted it in. Then we were faced --

Fry: Who? Is this the committee or the legislature?

Heckendorf: The legislature.

Fry: The whole legislature?

Heckendorf: The senate side. So, then the question would be, what would happen to our administrative procedure bill? Would they kill it?

Then the decision had to be made as to whether or not we would be willing to withdraw, if the legislature saw fit to take the Alcoholic Beverage Control Board out and test its own act.

Fry: Did Mary Ellen Leary in these articles write very straightforwardly about it?

Heckendorf: She was very forceful in her writing.



Fry: About the connections with Samish?

Heckendorf: Well, I don't know how far she went on that connection, but she was so forceful in what she said, that so aroused public opinion, that the legislature, the committee that Samish controlled, they didn't dare vote against the Administrative Procedure Act.

We didn't take part in holding the board in or holding it out. That would be up to the legislature. We would not object to the Alcoholic Beverage Control's trying its own act in eliminating them from the Administrative Procedure Act. That would give us the bill, and the governor his program, and the setup of the hearing officer and the supplying of hearing officers for all of the various boards, from an independent standpoint with a non-prejudiced person, not tied to the boards. So, there would be a just hearing and a fair decision. That's all that the governor wanted. So, we had that.

Samish, when he learned of that meeting, he went banging on the doors of the senators who were committed to him, because they were compelled from a public standpoint to vote along with Warren. I won't use the language that was said at that time.

Fry: By Samish you mean? [Laughter]

Heckendorf: But, he had met his equal and I have to give credit to Mary Ellen Leary for putting it in the public [eye].

Warren was right, straight down the line. He knew the bill was right, but we were up against a reality, and we were not going to push the legislature one way or the other. It was on principle.

She stirred the public opinion for it in the right way. The big man was knocked over.

Fry: That's marvelous. I wish we could find a copy of that story.

Heckendorf: We can get one. Ask Mr. Kleps, Ralph Kleps. I'll phone him if you like.

Fry: Fine. If he knows the date, I can get it out of the newspapers in the library.

Heckendorf: He would recall that. We were very close together during all of these hearings and all this procedure, and Senator DeLap who introduced the bills, and all. The legislature was very fair.

In the final analysis, we were merely coping with that Alcoholic Beverage Control Board, which was a rotten thing in the state. That





Heckendorf: particular thing was rotten.

This other matter of administrative procedures was merely a question of fairness. It would be unfair to have people take evidence from their pockets that the defendant had never heard of, at least didn't know it, nor the attorneys who were appearing for them. That was a matter to be straightened out in the administrative act, and I did that.

But the Alcoholic Beverage Control Board, Bonelli and that group, was just a mess.

Fry: This still didn't do anything to straighten out their questionable actions in issuing licenses?

Heckendorf: I can't say, I left the government then. When the act was through, Kleps was appointed.

There were some very good men that appeared for the position. But in the oral examinations, Senator Rich and myself -- he was from Marysville -- we felt that Mr. Kleps was far ahead of everyone. He had studied this problem for years, prior to the time that Governor Warren became governor. He had been working on this, [with] the state bar, the Judicial Council and the chief justice then, Phil Gibson. He was a tower of strength. He was a persuasive man, and he felt that this was a very unfair section, because so many business people and the like were unfairly treated by people who didn't understand what due process was. The accomplishment of this thing [made us] the first state to ever set up this type of procedure.

How the Alcoholic Beverage Control Board survived under its act and what it did, I never checked that out after I left Sacramento. I had too much to do down here that I had to keep up.

### Health Insurance

Heckendorf: This is off the subject of the Administrative Procedure Act. Governor Warren, prior to the legislative session, had met with the members of the medical profession. He asked them what they were going to do with respect to this taking care of elderly people and poor people, and the mental health situation. He never received an answer.

Long before the legislature met, he was hopeful that they would. One day at lunch he asked me, "What has the medical board done with respect to this problem of health?" I said, "They're not proposing



Heckendorf: anything. They're taking no stand. They've done nothing so far." He then introduced a bill -- Governor Warren introduced a bill -- for medical health and it stormed up a tremendous big storm.

I remember Collins, Sam Collins, was in the lower house; he had been a district attorney. Out in the hallway, I listened to the argument -- I can't remember the doctor's name. He was from Stockton; he was a health officer, at Stockton. He was a graduate of Michigan University and had gotten his degree there in public health. He made an excellent witness. The place was jammed. I can't think of his name right now. He was a brilliant man.

Sam Collins, at the recess, he said, "I hate to do this." He saw me standing in the hallway. I said, "What is it?" Well, he said, "This fellow isn't competent." When he started in cross-examining him, [he said,] "Doctor, I didn't hear what your qualifications were. I wasn't sure that I got them correct. Would you mind repeating them?" The doctor went down the line; he had all kinds of degrees, and he had a DMV.

Fry: Doctor of Veterinary Medicine!

Heckendorf: I remember, in the back of the room, where I was standing, someone said, "It took a horse doctor to prove his case." The governor's case, he had to use a horse doctor.

That's significant, in two senses of the word. One is that it's a joking thing, and again it showed how tight the medical people were against these people who needed help and couldn't get it. They were just like that.

Warren was just about twenty years ahead of his time. Look where we are now, the health insurance and all. They wanted to call the governor to the stand but they didn't dare do it. They called Swéigert to testify. They threatened to call him [Warren]. They do those things, some of those fellows.

Earl saw the problem as a DA. He had seen what was going on in mentally ill cases and all the poor people who couldn't stand the costs of the medical world.

Fry: Do you mean to include the mentally ill?

Heckendorf: They're included as well. Mentally ill as well as just ordinary illness and old age. It was a thing where he was just ahead of his time.

But, I think on the record, that statement of Sam Collins' just



Heckendorf: showed what they wanted to do. They weren't interested. They were with the medical group. They were not going to let the bill get through.

Fry: This was his final ace up his sleeve?

Heckendorf: A horse doctor, I don't know who said it. "It took a horse doctor to prove his case." But Sam just wanted to show by saying, "I didn't quite hear your qualifications. Would you mind repeating them." He had a good out, and he wanted to use it. "Oh, what is that, a DMV? That's just a horse doctor."

But I can't avoid saying that Earl was just that much ahead of them.

Fry: That would certainly be proven by later events.

Heckendorf: It was.

#### Provisions of the Administrative Procedures Act

Heckendorf: Now, about the Administrative Procedure Act, I don't know if it would be worthwhile to go through it.

Fry: Well, I have a few questions about it. It's unclear to me what it did not include. I read the California Blue Book on it, and I thought that perhaps it was sort of a research department, also, on administrative procedures for all departments. Is that correct?

Heckendorf: For what it did, that's part of it. It had to crawl before it could run, so to speak. The one that's set up -- that's why we couldn't object to the ABC going out. They had their act, we won the act we wanted to have the thing started. It did start, as a matter of due process, a fair hearing. That's all. You didn't want the people to be faced with this condition as it was prior to the act, that the state or the board or the agency, whatever it was, was the witness and the jury and the judge and the whole thing, you see. We wanted to separate that power.

It applied to the various boards that were in the department. We had to check each one of those boards with the fact that some of the functions of the board you wouldn't want to have a part of the act at all. So, we had to see what was the thing that was most important to them, and to the government, that should be regulated by the act. That's what took so long, with each board meeting constantly, seeing what they would agree to and what ought to be within the bounds of the act, of their particular act.





Heckendorf; We stated strongly in this particular book. This is the statement we made on it.\*

The statute was finally adopted in 1945. The first statute was called the Administrative Procedure Act.

This prescribes the minimum standards of fair administrative procedure in the field of administrative licensing and disciplining. Procedure set forth is fairly detailed, and it is designed to apply to formal, contested hearings, which are normally patterned closely after judicial proceedings.

There we used the Benjamin Act and the federal act and the attorney general's committee.

It was intended that all administrative agents in this state which exercise this kind of power will be required to adhere to this standard form of procedure, with such necessary minor variations for individual agencies as are possible without violating the provisions of the act. The second class consists of statutes amending the basic law governing each of the thirty-six odd state agencies which are covered by the Administrative Procedure Act. No attempt was made to require, in general terms, that certain agencies or certain activities be conducted in conformity with the act. Rather, it was thought desirable to specify precisely, by amendment of the statute governing each agency, which of its functions was to be governed by the statutory procedure. In this way, it was possible to avoid doubts as to the scope of the statute's application, and to avoid the inclusion of administrative functions not intended to be covered.

That's why each board had to be taken into the confidence of the governor, and the chief justice, and the committees of the senate and of the lower house, to see that they would know what we were driving at, and what aspect of their function was to be covered by the act.

The third class of statutes provides for the creation of a division of administrative procedure set up in the government. This office, was patterned upon the recommenda-

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\* See appendix, "To Rid California's Numerous Boards and Commissions of the Abuses of Bureaucracy, the Governor Advocated and Installed An Administrative System Calling for Uniform Rules of Procedure and for Fair, Open, and Orderly Hearings."



Heckendorf:

tions of the United States' attorney general's Committee on Administrative Procedure, and the Benjamin Report in New York, and is intended to furnish a permanent staff whose duty will be to improve the procedure at which the state's agencies undertake to regulate the lives and properties of citizens of the state. The Division is instructed to continue the study of the subject of administrative law and procedure and to submit its recommendation to the various agencies as well as to the governor and the legislature.

That brings a point up that you mentioned. This was the subject of a continuing study, keeping the legislature, as well as whoever the governor might be, as time goes on, abreast of the administrative law. Because many of our things now are taken away from the court and they are administered by agencies. California, then, in the adoption of that, became the first state to create a central clearing house for the common procedural problems of such state agencies.

In addition, the division of administrative procedure will maintain a staff or pool of qualified hearing officers who will be available on assignment to conduct a quasi-judicial state proceedings of the state boards under the Administrative Procedure Act. The Act requires the use of hearing officers, either from the 'pool' or from the agency's own staff, in contested hearings.

That would provide no man on the board, or woman on the board to sit in a secret session, or an executive session, and bring out extraneous evidence against the man or the lawyer and he'd not be able to know immediately what the case was being decided upon.

The hearing officer will be used as a referee to make a proposed decision, subject to the agency's action, or to preside at the hearing at which the agency itself will make the decision. This adoption of the hearing officer device, will, in large measure, avoid the criticisms which have been levelled at the California administrative adjudications because of the combination of the prosecutor and judge, and really, jury, 'which has been all too prevalent in the past.' Finally, the statutes provided a method of review of these quasi-judicial decisions.

That was set forth in Section 1094.5 of the Code of Civil Procedure, and it constitutes a clarification of the statutory form of the obscure rules laid down by the various supreme court decisions. The supreme court had held on review, in what they call mandamus and certiorari, in the difference between the state board and a local board, a different rule applied. There was such confusion in the law itself,



Heckendorf: that this final statute set that to rest.

Fry: What is the difference between mandamus and certiorari?

Heckendorf: Certiorari comes from a legal decision; you're reviewing. Mandamus mandates something. There were three cases which were horribly confusing to the laity and to the lawyers.

But this statute set the procedure all out.

Fry: Did you start work on this particular project as soon as you took office?

Heckendorf: Right away.

Fry: So, this was part of your --

Heckendorf: This was part of it. I had many other things to do with each board. I met with all the boards. I met them all the time in Los Angeles, San Francisco, and Sacramento. But with these problems, someone had to virtually live with those boards. I was the one to do that. I was alone; I was unmarried then, and I could be shipped all over.

Fry: Did the governor also take any active part in that staff?

Heckendorf: Yes. The governor appeared at the committee meetings of the legislature and he appeared at the board meetings.

Fry: Did he testify?

Heckendorf: No, he explained what he was trying to accomplish.

Fry: But not a formal testimony.

Heckendorf: No, not a formal testimony at all. I don't recall that he testified, but he appeared before the boards. And he did one other thing. He used to go in the mornings to the various departments of the state. He would meet them in the morning, and keep in touch with the departments, something that no governor has ever done. He'd come to my department and he'd say, "Well, look, I heard you got a new office over here." (You know, that building was built by these agencies that settled with their own fee that they paid in, and then we'd rent space out.) But he would visit and you'd never know that the governor was right there. He was watching everything. He was on the ball, so to speak. But, in fairness to the division of power in the state (the legislature, the executive, and the judicial) he did not overstep the bounds at any time.





Heckendorf: One proof of the pudding was Mary Ellen Leary's problem that she raised there. I wish there were another writer to kick the dust up now. Some of these things that are going on up there now ought to be changed.

Fry: Put the bright light of the press on them.

Heckendorf: Turn it on. Sometimes the press does some wrong things, but in the long run it's the only way you can get at it.



## LOBBYING ON THE TIDELANDS OIL QUESTION

Heckendorf: We [Warren and I] saw that when we went back [to Washington, D.C.] on all of that oil stuff, [the tidelands oil controversy] with our speeches. We stayed at a different hotel to get away from Samish, (I looked for these pictures of these oil fellows.) God, they were on our necks on the train and the hotel, so we just moved to a different place, because we were representing the government, and they were for the oil interests. That kind of pressure has never been approved by Warren, in any stage of his life, that I'm familiar with.

This is the report, our speeches; the whole thing is here. [Hands interviewer some papers.]\*

Fry: Well, good. We want to put all those records in The Bancroft.

Is there anything that we have to go into about the tidelands oil episode to tie together some of these reports, except the fact that you and Warren felt terribly pressed by the oil men?

Heckendorf: Well, that's right.

Fry: When you stayed in the out-of-the-way hotels, was that when you were going around for committee hearings?

Heckendorf: That's before we testified.

Fry: Was this the federal hearing in Washington, D.C?

Heckendorf: Yes, the federal hearing in Washington. We had to take that hotel to

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\* See Heckendorf papers, Tidelands Oil, The Bancroft Library, University of California, Berkeley, California.



Heckendorf: stay away from the oil men.

Fry: Who were the oil men?

Heckendorf: It was the Gas and Oil Association, I think is what they call it. Anyways, it was the oil industry. They wanted to keep the tidelands.

Fry: Did you mention that Samish was in on this?

Heckendorf: No, he wasn't.

Fry: Let me get this clear. You and Earl Warren wanted the state to retain the tidelands up to the three mile limit.

Heckendorf: That's right.

Fry: Now, what did the oil companies want?

Heckendorf: They wanted the same thing. They wanted us to succeed. You see, the federal government under Senator Gerald Nye of North Dakota -- he introduced the bill in the United States Senate to take all the tidelands from the first thirteen colonies of the Northeast, clear on down around through the Gulf of Mexico and clear on up to the Oregon border, the Canadian border.

That meant a fight. They had this argument. The middle states, that were non-liberal states, that did not face on the ocean anywhere, they could see a great wealth in that land coming out and they were getting no part of it. They were touch-and-go on that thing. They saw dollars that would help them locally.

Fry: They could share this oil revenue.

Heckendorf: So, we felt that historically it always had been this way. Some of the first tideland wells were in Santa Barbara County, at Summerland, just east of Montecito. Then we had those to the west of us, the Elwood oil fields, a tremendous amount. We collected millions of dollars on them here. We had all that set up. The amount of money, the assessed evaluation, and everything that we had received was a public record and I set it all out for them, Earl, on the question of the law. We then were right up against it. The act was introduced and the hearings were set down. All these oil men were talking to me and talking to Earl and doing everything to talk with the public men -- the city attorney at Long Beach -- and they got a lot of money down there from the tideland; they got a tremendous amount. (And now they are trying to cut back the state, use it for the university rather than some of that junk they got down there, like the Queen Mary and so forth [at Long Beach]).





Heckendorf: Well, the thing developed into Congress. The first thirteen states were involved. There was no federal government at all there; they owned their land. But they had a good case, so they went out of the act.

Fry: Oh, separately.

Heckendorf: Yes, the first thirteen states. They had a good case, you see, because there was no federal government [when those states were formed.]

Fry: So, this eliminated any question for them.

Heckendorf: Yes, that first went out. All right, the next thing that went out was Texas. Texas had offered its public lands to the federal government, if the federal government would assume its public debts.

One senator -- I can't remember his name -- he said, "Well, hell. We can't raise anything but horned toads on that area that they want to return to us; let them keep their tidelands."

Fry: That was quite a bit before this bill came up, when that happened?

Heckendorf: It was right during it. Years before -- yes, you're right -- years before, they had offered the public land to the federal government and they said, "Nothing doing. You keep them."

Fry: - because all you can grow on it was horned toads.

Heckendorf: That's right. Texas went out. Then we came to California -- that was Mexican origin -- so they had fifty veras - (I can't remember the number --)

Fry: Well, that's easily looked up.

Heckendorf: It has a roadway all along the ocean, the complete base would not be cut off. That was the thing about the Mexicans. So we said, "Look. That was there --"

Fry: Wait a minute. You mean the Mexican government originally had ownership of this fifty-veras-wide strip along the beach?

Heckendorf: Fifty veras wide along the beach. The argument was used that therefore we would own the tidelands. But the final upshot of it was, when we got ahold of Senator Nye, we said, "Now look. It isn't fair to put the thirteen colonies out, Texas is out, and hold these other states like California in here." He then said, "Well, that much is going out, I'll not press the bill."



Heckendorf: So, we killed the bill the first year. The second year, it came up again, and we killed it again. But, at the Hiram Johnson hearing, the first person --

Fry: Hiram Johnson was still a senator from California?

Heckendorf: Yes, Hiram Johnson was a good friend of Earl's. [Pointing to documents] Their testimony is in those federal documents there. It's all in that.

Fry: Well, these reasons don't really hold water, do they?

Heckendorf: No. Now, the next thing complicates it. The federal government had given a lot of scrip out; Valentine scrip was one. There was all kinds of scrip that you could buy, and apply it to any public land you wanted.

Fry: When was that?

Heckendorf: The federal government would issue different kinds of scrip. You could buy it, then you could apply it to any public land that you wanted to.

Fry: Individual private owners?

Heckendorf: No. The public lands are subject to sale at certain areas at certain times, and you could apply this Valentine scrip. Many of the soldiers were given scrip in the Civil War, and they were coming in. But a lot of them tried to apply it to the tidelands out here, as public land, thinking, well, if there's public land we might as well get it. But they never validated any of it.

Fry: Was that in the nineteenth century?

Heckendorf: Yes it was. All this was way back.

Fry: So, they never did get any --

Heckendorf: None of them were recognized here.

The irony of the thing was when we first went back [to Washington, D.C.] on the tidelands, [we] made a great showing. It was a marvelous showing. The senator from Texas, Tom Connelly, he used to wear those kind of bold, big Windsor ties that flopped around. He sat in the lower house when we were in there. That was a big committee, and he had already been put in the Senate with Johnson, but he was just so interested in what was going on that he just couldn't leave the House.



Fry: Well, he was interested in protecting the Texas shoreline.

Heckendorf: He was watching to see that they didn't do anything that took anything of Texas back. You can walk I think it's several miles out [into the Gulf of Mexico] and still not be over your head in the water. It's a very flat plane. Here [in California] you can go out, say, five hundred feet and you're suddenly down six hundred feet; don't take the next step!

But, he was there to see that we didn't do anything that would jeopardize Texas, because they have a lot of Gulf and a lot of wells there, miles out.

Fry: I wonder, too, about the California local oil lobbyists. Did they go to Washington, too? In other words, if I wanted to ask them about the Washington hearings on the tidelands oil, would they have been involved in it?

Heckendorf: Well, I was the only one from here that went up, and was for the city and the county. We worked close with the city. Later on, I became a member of the city council, but at that time, it was the county who was the one that I actually represented.

Fry: You were going up not as a oil lobbyist.

Heckendorf: Oh no. We represented the government. No strings on us at all. That's why we were fearful of Drew Pearson, although Earl knew him, and he became very laudatory about Earl [in his syndicated column].

Fry: Why were you fearful of Pearson at that time?

Heckendorf: I wish I had found all those pictures of all those damn lobbyists, big pictures in Washington at the hearing, and they [the press] caught me with about six of them. We were at the table, and I was talking to this fellow, and that damn press picked them. I got copies of the pictures of them, but I can't find them here.

Fry: You were afraid that Pearson was going to --

Heckendorf: Well, Earl was the one that suggested it [going to another hotel.] We always used to go up to the Mayflower. But I can't remember this place we went to. It was like a -- it wasn't a private club -- it was a high class apartment. We said that we would just avoid these fellows because they're hotter than a firecracker, these oil fellows. [Earl said,] "Drew might say something; they might get a picture of you or me or somebody with one of these oil fellows that might be a stinker of a person." And they were. They pressed the hell out





Heckendorf: of us, all the way. From the train --

Fry: On the train?

Heckendorf: Yes. On the way, going to Washington. "What are you going to do? What kind of brief. Look at this point." He had the city attorney of Long Beach, he had the Los Angeles County group represented, they were all there.

Earl and I -- he represented the state and I represented this county -- we were clean. Nothing could touch us. He'd tie up with Senator Hiram Johnson, who was very forceful there.

Fry: Well, when we get all of these hearings on the tidelands oil bill with the speeches and put that in with it, then we'll have a pretty good record of it.

Heckendorf: Yes, you should have. Earl's is in there and my talk is in there, but I don't have the maps that we kept turning the pages over. I referred to them in the speech.

Put this on record. You don't know what's going to happen with the seashore and all that. Some of them [the shorelines] go nine miles out; some of them are three miles limit, which was the extent of the effectiveness of a cannon shot.

Fry: Is that how the three-mile-limit originated?

Heckendorf: Yes. The cannon would shoot about three miles, and that's the end of it.

Fry: In other words, it's the defensible limit.

Heckendorf: A defensible limit and an effective limit.

Fry: They used this then, as the limit for use of natural resources?

Heckendorf: Now we know that on the tidelands, that out on the continental shelf, they got that all geologized, the whole works. My gosh, on the whole, the minerals and riches in that field!

Fry: Now, did you mention to me that Samish was working on this too?

Heckendorf: No, he was never mixed up in this oil [business.] At least, I never ran into him.

Fry: What about the local lobbyists in Sacramento, like Mr. Keck, the independent oil man, and Harold Martin; and the Standard Oil people, and others?



Heckendorf: Yes, I know Bill Keck. The man that I was practicing with (when I came back [from working] with Earl) represented the Keck people and I represented the girl in a manslaughter case. Her husband was a heavy drinker, had a bad marriage and everything went wrong. The son, young Bill, would come into the office there. Wealthy!

But they never sent anyone. They've got an association; the oil industry has an association. I think there are two of them. They are competitors within the field, but they have a unified interest so far as the industry is concerned. They do maintain a lobby.

That raises, I think, the most serious problem we actually have. We used to talk about that early, when we got to Washington. When you go back there, you're so far away from everything, particularly [if you are] from the West. You're way out of the planning. The eastern people were right fairly close, but we're far away. And these fellows work on you. You're at their parties, which would start at four o'clock in the afternoon. Nothing but money. We'd have these people go out there and they'd be half crocked up. Deals are made then, I think, and they'd push fellows around.

How are you going to hit it? You need lobbies because you [a legislator] can't really know what's the significance of all of these bills; there are so many of them. We have to have them.

Now, on the other side you have the bad side of it, with this influence. You see, they're trying to influence you. How are you going to lick that? Only by the character of the men that we send to the legislature. I don't know what the answer is to it. Good men are now dropping out. It's a very sad thing. Locally here, Samish I must say had more power than the governor, in certain respects, far more. The governor just recognized it, and he just said it's there, and what can you do about it?



## WARREN, HECKENDORF, AND THE STATE LEGISLATURE

Fry: How did your local legislators here help you, like Assemblyman [Alfred W. "Bobby"] Robertson, for instance?

Heckendorf: Well, he was the chairman of the Democratic party of the state and he was also the leader of the assembly. Now he was a Democrat, and Earl was the other, so there was friction there. There was attacking of the Administration; they were trying to knock it down as far as they could. You suffer that.

It shouldn't be, actually. Earl went in on a non-partisan basis when he ran. Olson had been in, and he was a Democrat. At that time the voting I think leaned a little over towards the Republican side. But it [Republican registration] had been going down and down, and from their standpoint it was fairly even.

But when Olson was in, he aggravated so many people. He left the state so that when Earl came on the scene -- and he only did because, as I explained yesterday, he was prepared for all this that did come to pass. He stepped in, and I was so happy that he did take over.

Fry: But when he did take over as governor, the legislature was fairly cooperative on that first session.

Heckendorf: The first session, we appeared before the committees in there, and they were most gracious. I don't know of an instance [of ungraciousness] of all these agencies that I had to appear for, just within my department, that had required budgetary hearings. [They would just ask], "Why do you need that much money? For what purpose?" and so on.

They were gracious. Just the very fact that I was part of the administration, things used to go right through. I remember that they used to attack me once in a while, just to needle me, but they





Heckendorf: always came through. They always came through. He [Earl Warren] had that ability.

I think [Artie] Samish, now, maybe he's trying to come back. I don't know. It's a long trail since the twenties or the thirties. I don't know whether he could re-establish himself or not, at the legislative level. That's why we need young people out of college [in the legislature], the people that have the training and the education, not just some of these fellows that just want the job. That's the problem.

Fry: It seems to me that since you had a man from your own home county, such as Al Robertson, who was leader of the assembly Democrats, this might have given you an advantage in working with some of the Democrats.

Heckendorf: Well, it did in a way. He trusted me. I handled his estate when he died. But I could not -- for instance, like this bill for the UCSB [University of California at Santa Barbara] here. Tom Storke wanted it, and he was one who had it introduced through Bobby. He could not go to Earl, because there were a lot of policy things that the Democrats were opposed to on principle. But he could come to me and talk to me, "What more can I do to get the bill through? What would you suggest here?" and so on.

Tom wanted the bill. We could never say that to the legislature, and Bobby [Robertson] had to keep his distance and not embarrass the governor, even though he was put in on a non-partisan ticket. See, the Democrats actually were the ones who put us over.

Fry: By embarrassing the governor, what do you mean?

Heckendorf: Well, he couldn't go in [to the governor's office.] He [Bobby] just felt, being the leader of the opposition, "I can't just have the freedom of the [governor's] office here, walk in and out." The senators used to walk in and out and see Miss MacGregor and see Vern Scoggins and then want to see the governor. The people who were on our team, the important men on the committees, they'd have a right of way to go in because Earl would have to have a two-way communication there with the chairmen of the committees.

But just for an opposition fellow to feel free [to do the same]-- Bobby just kept his distance there, which he properly should. He didn't embarrass the governor in any way. He voted against some of the bills that the governor wanted, but the major things, the program went through.

Fry: What about the administrative procedure bill? Did he help?



Heckendorf: Yes. He was all right.

When I came back to Santa Barbara with that, [after its passage] I took copies of the bill. I sent a personal letter to each one of the lawyers, and a copy of the bill, and told them where to put it in the code of civil procedure, and that way they'd have it right up to date. From the time the bills are put into code, it's sometimes a year [before it reaches the lawyers], and a lot of water passes under the bridge. So, I did that for all the lawyers here, but not throughout the state -- that would have been a costly affair. But, I had copies of the bill printed and right from the printer in Sacramento [I sent them to lawyers] to put in their code of civil procedure.

Fry: This bill took two sessions to get passed?

Heckendorf: Yes.

Fry: That was a lot of work.

Heckendorf: Well, you see, we couldn't get it in. We went in in '43, and it took 'til '45 to work that through all those boards and things. It was worth it though.

Transcriber: Marilyn Fernandez

Final Typist: Marilyn White



Santa Barbara, California  
June 5, 1946.

Honorable Earl Warren  
Governor of California  
Governor's Mansion,  
Sacramento, California.

Dear Governor Warren:

I cannot refrain from supplementing my telegram of today with a few more words expressing my own joy and happiness in your well earned and deserved victory.

The town has simply gone wild over the great victory,---the nearest thing to the feeling after a victorious Big Game between California and Stanford. It would have done your heart good to see Dwight carrying on like a yell leader as the many town big wigs gathered in his office to celebrate the big event---he even postponed a trip to Los Angeles in order to stay in the middle of things and tell how we all had to get ready for the national campaign. This place has never witnessed a thing that has so aroused the whole community spirit as your mandate from the people. There is now a general feeling in both parties that the shackles have been cut away, and that an honest straight-forward man who is looking solely to the public's interest and who knows what he is doing and where he is going, has come forward in a time of crisis and given confidence to the people that their best interests will be guarded against all special interests and groups.

I am enclosing a front page editorial Herb Orriss wrote today that hits at the heart of the public feeling that is rampant today. He has said something that is going to catch on all over the country, and be one of the strongest forces that will carry you to the Presidency.

As I listened to your praises being sung at Dwight's office I could not help but reflect on our trip to Washington in 1939. Jim Oakley and I looked at the Whitehouse through the hotel window and said that we would not be satisfied until you were its occupant. I mentioned that to you when you left the Attorney General's office. You have taken two long steps toward the Whitehouse since then. What has happened in the election has more vividly impressed upon me the truth and wisdom of the words





my old friend Dr. David Starr Jordan inscribed in my copy of his autobiography just twenty years ago---

"The world turns aside to let any man pass--- if he knows where he is going".

In addition to these words he said something more in his "Confession of Faith" that so aptly and justly fits you and explains part of the reasons the whole state turned to you as it did yesterday that I must repeat these words here for you---

"And now, when my candle is fading a little, I am trying to use its light for those things which seem to me best worth while. Of those that come near me three stand out as all-important. These are clean living, sound education, and fair play between men and nations....

And no one can do anything worth while unless he does his best. And to do his best he must save all his strength. Every vile habit, great or small, takes away so much of our forces for action".

God Bless you and your lovely family, and my every wish and prayer is that you will all soon occupy the Whitehouse as Jim and I have hoped through these years.

It has been a privilege and a high honor to have known you and been associated with you during the past sixteen years. I have never known a man who was more square, just, and understanding in my life. I sincerely appreciate all you have done for me. My only ambition now is that we may all soon witness your rise to the highest gift within the power of the people of our country to bestow upon you.

My best wishes to Mrs. Warren and the children and yourself.

Sincerely,



Los Angeles, California  
September 3, 1946

Honorable Earl Warren,  
Governor of California,  
State Capitol, Sacramento, Cal.

Dear Governor Warren:

As you have known for sometime, I have been withholding my return to the private practice of the law pending completion of the organization of the new Division of Administrative Procedure. I am pleased to report that I have now completed the organization of that division. The appointment of the last member of the staff has just been announced.

I sincerely appreciate the opportunity to serve which you accorded me in entrusting to my Department the program for the creation of the new Division. The entire program is well on its way. It will be reported upon in detail at the coming meeting of the State Bar at San Diego, the latter part of this month.

The new Administrative Procedure Division is the first of its kind in our Country. It is now serving as a model in fourteen states. Its effectiveness has been demonstrated by cutting down appeals from administrative decisions to the point where only three out of fifteen hundred cases were appealed, all three appeals being unsuccessful.

You must know how much I have enjoyed public service with you. It has been not only a pleasure but a great honor to be a part of your administration. Our close association for well-nigh sixteen years must now be interrupted; but, my dear and esteemed Governor, know that I shall always stand ready to answer your summons and call whenever I may be of help or assistance. And so, with all sincere good wishes for the continuing success of yourself and your administration, I hereby tender my resignation to become effective October 1, 1946, at which time I shall return to Santa Barbara, my home town, to resume my private practice of the law.

Sincerely yours,

PERCY C. HECKENDORF







## State of California

GOVERNOR'S OFFICE

SACRAMENTO

September 13, 1946

EARL WARREN  
GOVERNOR

Honorable Percy Heckendorf, Director,  
Department of Professional and  
Vocational Standards,  
State Building,  
Los Angeles, California.

Dear Percy:

I have just received your letter of September 3 in which you tender your resignation as Director of the Department of Professional and Vocational Standards.

Realizing from our previous discussions that you have desired for some time to return to private law practice, I am accepting your resignation with a great deal of regret.

I have enjoyed our pleasant association of more than sixteen years in various matters of public service, and I am particularly grateful for the service you have rendered to me and to the State of California as Director of our Department of Professional and Vocational Standards. I know it has been difficult for you to postpone your own plans and to carry on until the complete organization of the new Division of Administrative Procedure. However, I am glad that you were able to do it and I deeply appreciate your cooperation in working out this important program.

It is my sincere hope that you will find happiness and every success on your return to private practice of the law, and I want you to know that I value highly your willingness to continue your interest in the administration of our state government.

It will always be a pleasure to see you or hear from you from time to time.

Sincerely,

Governor.





# California's Approach to the Improvement of Administrative Procedure

By Ralph N. Kleps\*

THE last session of the California Legislature made provision for an investigation into the procedure of California's administrative boards and agencies. This was done by a general statute directing the Judicial Council of California to undertake a thorough examination of administrative procedure and the judicial review of administrative action in this state. The Council was then instructed to report back to the 1945 session of the Legislature with recommendations and suggestions for both legislative action and action by the various boards. The statute specifically referred to the investigations made elsewhere and asked that the findings of other groups be examined and adapted to the problems existing in this state.<sup>1</sup>

In carrying out the task assigned to it by the Legislature, the Judicial Council entered a field new to it but one which was by no means virgin territory.<sup>2</sup> Activity in this direction was already under way in California, and the recent experience of other states and the federal government in this field was available. In addition, the Council had the background of a recently completed revision of procedure in the California appellate courts which furnished a pattern for the organization of this work.<sup>3</sup> It is the purpose of this article to discuss briefly the technique used by the Council in carrying out this assign-

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<sup>1</sup> Cal. Stats. 1943, c. 991; *DEERING'S GENERAL LAWS* (1944), Act. 40.

<sup>2</sup> A prior delegation, in identical terms, had been made by the Legislature in 1941 but action thereon was postponed because no funds were provided for the technical staff necessary to carry out this assignment. See *NINTH REPORT OF THE JUDICIAL COUNCIL OF CALIFORNIA* (1943) 5. The 1941 Legislature also provided for the publication of all administrative rules and regulations and created a state agency, the Codification Board, to supervise this work. Cal. Stats. 1941, c. 628; CAL. POL. CODE, §§720-725.4. See also Cal. Stats. 1943, c. 1060; *DEERING'S GENERAL LAWS* (1944), Act. 41.

<sup>3</sup> In 1941 the Legislature enacted CAL. CODE CIV. PROC., §961 and CAL. PEN. CODE, §1247½ which conferred upon the Judicial Council the power to provide for appellate procedure by rule. The Council's rule-making power was carried out with the assistance of a research staff under the direction of Mr. B. E. Witkin, draftsman of the new rules on appeal which became effective on July 1, 1943. See Witkin, *New California Rules on Appeal* (1944) 17 So. CALIF. L. REV. 79, 232.





ment and to compare the basic theory underlying the Council's proposals with the theories followed elsewhere.

## I

It was the middle of 1943 before the statute committing this task to the Judicial Council became effective. A committee of the Council was appointed and a research staff selected.<sup>4</sup> It was first necessary to make a general survey of the statutes under which California's numerous state agencies have been created over a period of some seventy years. Upon the basis of this investigation certain general categories of the state's administrative agencies became apparent. The agencies vary both in the nature of the task performed and in the extent of the power conferred. From a functional standpoint the agencies in this state seem to present all possible variations, from those whose sole duty is to assemble facts and report upon them to those which themselves have the power to render awards in favor of one private citizen and against another. In carrying out their duties the agencies have various combinations of power, including both the power to make rules and regulations establishing general standards of conduct and the power to make orders and determinations affecting particular matters and based upon evidence. From the organizational standpoint California's administrative agencies present a similarly complex problem. Large numbers of agencies are created and controlled by such local governmental units as the counties and chartered cities. Most frequently, the state agencies are created by the Legislature and are fully subject to its control. Some of them, however, are immune to legislative control in differing degrees because their delegation of power comes directly from the Constitution or from an initiative act concerning which the Legislature has only a limited power.<sup>5</sup> Even where the Legislature apparently has full control over

<sup>4</sup> The Judicial Council's Committee on the Administrative Agencies Survey consists of the chairman, Justice John T. Nourse, presiding justice of the District Court of Appeal, First District, Division One; Judge C. J. Goodell, judge of the Superior Court for the City and County of San Francisco; and Judge Maurice T. Dooling, Jr., judge of the Superior Court for the County of San Benito.

<sup>5</sup> CAL. CONST., art. XX, §22 provides, in part: "The State Board of Equalization shall have the exclusive power to license the manufacture, importation and sale of intoxicating liquors in this State . . . and shall have the power, in its discretion, to deny or revoke any specific liquor license if it shall determine for good cause that the granting or continuance of such license would be contrary to public welfare or morals." *Ibid.*, art. XXIV, §2 provides, with respect to the State Personnel Board, that "the adoption

state agencies variations exist as to the kind of power which it can delegate, depending upon the applicability of the separation-of-powers clause of the California Constitution to the particular agency.<sup>6</sup>

This background is given because it has an important bearing upon the way in which the Council approached its assignment in the field of administrative procedure. The problems presented were so involved that a careful selection and treatment of them was required if specific recommendations were to be offered to the 1945 Legislature. In addition, various groups were active in this field and it was important that there be as little duplication and overlapping of effort as possible. Consequently a conference was called by the Chairman of the Judicial Council, Chief Justice Phil S. Gibson, in San Francisco in October 1943. Representatives of a number of state agencies, the Attorney General's office, the Codification Board, and the State Bar of California were present. A number of steps were agreed upon at this conference in order to eliminate duplication of effort. The Attor-

of rules and regulations, the creation and adjustment of classifications and grades, and dismissals, demotions, suspensions and other punitive action for or in the State civil service shall be and remain the duty of the board and a vote of a majority of the members of said board shall be required to make any action with respect thereto effective." Similarly, the Chiropractic Law, *DREXLER'S GEN. LAWS* (1944), Act 4811, which contains no provision for amendment, is subject to article IV, section 1 of the Constitution prohibiting the Legislature from amending such a statute.

In situations such as the ones enumerated the Legislature's power is limited by constitutional provisions which might prevent it from applying certain of the proposals advanced by the Judicial Council for the improvement of administrative procedure.

<sup>6</sup> With respect to the Railroad Commission and the Industrial Accident Commission the Legislature has plenary power, unlimited by any provision of the Constitution. CAL. CONST., art. XII, §23; art. XX, §21. Thus, full judicial power can be conferred upon these agencies and finality given to their determinations. *Live Oak W. U. Assn. v. Railroad Comm.* (1923) 192 Cal. 132, 219 Pac. 65; *Western Metal Supply Co. v. Pillsbury* (1916) 172 Cal. 407, 156 Pac. 491. At the opposite end of the scale, no part of the judicial power can be conferred upon ordinary state agencies because of the separation-of-powers clause. Thus, the Legislature cannot attribute any finality to the acts of most state agencies. *Laisne v. Cal. St. Bd. of Optometry* (1942) 19 Cal. (2d) 831, 123 P. (2d) 457.

Several agencies occupy an indeterminate position somewhere between these extremes. The constitutional delegation of power to the State Board of Equalization with respect to liquor licenses has already been mentioned, *supra* note 5. More finality might be accorded under this broad grant of discretionary power by the Constitution than could be given to a delegation by the Legislature. Similarly, CAL. CONST., art. IV, §25a ratifies and confirms the provisions of the act creating the California Horse Racing Board, one of which is: "The action of the board in revoking or suspending a license issued under this chapter is final, except that the propriety of such action is subject to review, upon questions of law only, by the superior court. . . ." CAL. BUS. & PROF. CODE, §19463; CAL. STATS. 1933, c. 769, §9.





ney General's office, which had undertaken to revise the rules of procedure of certain state agencies, concluded that this work should await the completion of the Judicial Council's recommendations to the Legislature. The Codification Board, which is charged with the responsibility of publishing the rules and regulations of administrative boards in this state,<sup>7</sup> determined to arrange its publishing schedule so that procedural rules would not be printed which might be superseded by legislation proposed by the Judicial Council. And the State Bar of California, whose committee on administrative agencies and tribunals had been working in the field of administrative procedure for several years, decided to devote its efforts to assisting the Council in the formulation of proposals for submission to the Legislature.

The next problem was the selection by the Committee of the Judicial Council of the precise kind of administrative action to which it should devote its attention during the year and three months available prior to the meeting of the 1945 Legislature. It was important that a cohesive group of administrative agencies be selected in which the Council could hope to complete its work prior to that time.<sup>8</sup> From the general survey of state agencies previously made it was apparent that the kind of function which has most often been delegated to administrative agencies by the Legislature is the so-called licensing function, which involves the power to regulate and discipline certain activities or occupations. In addition to the fact that they furnish the largest single category of state administrative agencies, there was also the fact that the decisions of such agencies have been challenged frequently before the California courts in recent years. The Committee determined, therefore, that the numerous statutes under which the state's licensing agencies had been created and the rules which they had adopted to govern their own procedure should be carefully analyzed. This was done and public hearings were then scheduled at

<sup>7</sup> *Supra* note 2.

<sup>8</sup> This selection involved a consideration of both the function performed and the organizational structure of the agency. With respect to the former, it was thought that the nature of the Judicial Council was such that its most useful recommendations could be made in the field of formal administrative adjudication. This eliminated, for the present at least, the quasi-legislative regulatory agencies and informal administrative proceedings. With respect to the structure of the agency, it was necessary to omit from the present investigation agencies created under special constitutional provisions not applicable to the general group of state agencies, e.g., the Railroad Commission and the Industrial Accident Commission.

which representatives of the different licensing agencies were requested to appear before the Committee. A total of twenty-one state agencies appeared at these hearings, which were conducted during the months of January, February, March and April 1944.<sup>9</sup> A stenographic transcript of each hearing was prepared and thereafter the material was reviewed by the staff and assembled for the use of the Committee. These hearings were attended by representatives of the Attorney General's staff, the State Bar of California and the Department of Professional and Vocational Standards, as well as by representatives of each of the agencies. A detailed list of questions was asked covering all phases of administrative licensing and disciplining, and the answers furnished a valuable picture of the present-day operation of many of our state licensing agencies.

A sufficient cross-section of existing procedure had been secured by April, in the Committee's judgment, so that tentative conclusions could be framed. The staff was then instructed to examine and summarize the case law in California, the results of similar investigations in other states and law review comment relating to the problems involved. This work was completed during the months of May, June and July. During this period, also, staff members attended various hearings throughout the state for the purpose of securing first-hand information concerning the conduct of administrative hearings under existing practice. The Committee determined about this time that an "administrative procedure act" should be drafted for submission to the Legislature. This act would set forth the minimum requirements of fair play which all licensing agencies would be required to observe. This decision placed an additional limitation upon the Committee's work. Many administrative functions which seemingly come within the licensing category actually involve nothing more than a permit for tax purposes or a mere registration or recordation of individuals engaged in a particular business rather than continuous, disciplinary supervision. Such "licensing" proceedings and the infor-

<sup>9</sup> The following agencies appeared: Board of Medical Examiners, Board of Dental Examiners, Board of Pharmacy, Board of Nurse Examiners, Board of Chiropractic Examiners, Board of Osteopathic Examiners, Board of Optometry, Board of Funeral Directors and Embalmers, Contractors State License Board, Board of Barber Examiners, Board of Cosmetology, Board of Registration for Civil Engineers, Board of Accountancy, Board of Architectural Examiners, Board of Examiners in Veterinary Medicine, Structural Pest Control Board, Yacht and Ship Brokers Commission, Bureau of Furniture and Bedding Inspection, Commissioner of Corporations, Insurance Commissioner, Real Estate Commissioner.





mal, investigatory proceedings which are part of the process of issuing licenses could not be covered by the same provisions, the Committee concluded, as the formal proceedings in which a licensing agency exercises its discretionary power to discipline the members of a given profession or vocation. These informal proceedings the Committee did not attempt to cover by its draft.

During the summer months the Committee met frequently, on the average of a day or two a week, for the purpose of analyzing and discussing particular problems involved in the administrative procedure statute. In addition to drafting an administrative procedure act, the Committee framed certain other legislative proposals which are included in the Council's report. As each portion of the draft was completed, it was sent to the members of the Judicial Council. When the proposals were completed a meeting of the full Council was called for September 14 and 15, 1944. At this meeting the Council debated the proposals which had been previously circulated and agreed upon certain amendments and omissions. As modified, the proposals were tentatively approved for inclusion in the Judicial Council's report to the 1945 Legislature. But the Council determined to submit these proposals to all interested groups throughout the state prior to a final preparation of the Council's report.

By October 15 over 400 copies of the proposals and 200 copies of a supporting appendix<sup>10</sup> had been distributed to the state agencies, state and local bar associations and other interested groups. This material was sent to all state agencies whose functions might come within the purview of the act, including those not yet consulted as well as those which had already appeared before the Committee. It was sent to the office of the Attorney General, to the Codification Board and to the office of the Legislative Counsel. Thereafter conferences were scheduled by the Committee with each of the state agencies which had not previously appeared before the Committee whose functions seemed to be within the field sought to be covered by the

<sup>10</sup> In the appendix an attempt was made to bring together, under appropriate topic headings, the information on existing practices which the Committee had assembled, the case law and statutory provisions in California, a summary of recommendations and suggestions made as a result of similar studies elsewhere and a summary of periodical and textbook comment upon the problems involved. Though this was compiled primarily for the use of the Council, it furnishes a useful reference work upon problems of administrative procedure.

act.<sup>11</sup> Numerous comments and suggestions were received as a result of this intensive examination of the Council's tentative proposals, particularly from committees of the State Bar of California and of local bar associations. In the light of public discussion and suggestion, the Council revised its proposals at a meeting held early in December 1944. Thereafter the report was submitted to the Legislature and to the Governor in accordance with the terms of the statute authorizing the work.

## II

The actual method by which the proposed legislation for improving California's administrative procedure was drafted has been described in some detail. It is believed to be a sound development in the legislative process. It is a technique which has been used widely in other states,<sup>12</sup> particularly with respect to the complicated problems of revising administrative procedure.<sup>13</sup> It would extend this article unduly to compare the conclusions reached by the Judicial Council's report in detail with those which have been reached by other similar investigations, and in fact the Council's report to the Legislature furnishes the best source for such a detailed comparison. But it might prove useful to examine briefly certain differences be-

<sup>11</sup> The following agencies appeared at the conferences which were scheduled after the release of the tentative draft of the Council's proposals: Department of Social Welfare, State Mineralogist, Department of Education, Department of Motor Vehicles, Athletic Commission, Labor Commissioner, Fish and Game Commission, State Personnel Board, State Board of Equalization, Department of Agriculture, Department of Public Health, State Fire Marshal, Collection Agency License Board, California Horse Racing Board.

<sup>12</sup> In many states the judicial council has been utilized for the purpose of preparing the groundwork which underlies legislation involving the administration of justice. See HANDBOOK, NATIONAL CONFERENCE OF JUDICIAL COUNCILS (1942) 179-187. In New York a separate agency has been created, the Law Revision Commission, to which the task of preparing studies and recommendations for legislation in complicated fields has been delegated. See Shientag, *A Ministry of Justice in Action: The Work of the New York State Law Revision Commission* (1937) 22 CORN. L. Q. 183; Stone and Petter, *Revision of Private Law* (1940) 54 HARV. L. REV. 721.

<sup>13</sup> A partial list of the jurisdictions and groups by which such work has been done follows: United States, Attorney General's Committee on Administrative Procedure, Conference of Commissioners on Uniform State Laws; New York, report on administrative adjudication by Commissioner Robert M. Benjamin; Ohio, Administrative Law Commission; Illinois, Administrative Practice and Review Commission; Minnesota, Revisor of Statutes; North Dakota, Code Revision Commission. In addition, of course, the American Bar Association and the various state bar associations have been actively engaged in the preparation of legislative proposals in this field.





tween the basic theory underlying the Judicial Council's proposals and the theories expressed in the studies made elsewhere. For this purpose the report of the Attorney General's Committee, the Benjamin report in New York, the report of the Ohio Administrative Law Commission and the statute proposed by the Conference of Commissioners on Uniform State Laws will be considered.

After a two-year investigation the Attorney General's Committee on Administrative Procedure rendered its report early in 1941. This report contained elaborate recommendations and a detailed analysis of the operation of federal administrative agencies. It was accompanied by two bills, later introduced in Congress, which expressed the conclusions of the majority and minority of the committee. The majority bill limited itself to the establishment of an Office of Federal Administrative Procedure, certain general requirements as to administrative rule-making, provision for hearing commissioners to aid in administrative adjudication and provision for declaratory administrative rulings.<sup>14</sup> The minority bill, while approving the suggestions incorporated in the majority bill, went further and attempted to prescribe a fairly detailed "code of administrative procedure" to be applied to the federal agencies.<sup>15</sup> The majority of the committee suggested that the minority's theory of a "code" was unacceptable because of the dilemma presented: either the "code" would be so rigid that all agencies could not comply with it if their proper functions were to be performed, or the "code" would be framed with such flexibility that the supposed "standards of fair procedure" would be illusory and susceptible of varying interpretations by different administrative officials.

This conflict in theory has not been resolved. In 1942 the Benjamin Report on Administrative Adjudication in New York was published, concluding a three-year study in that state. It was the conclusion of that report that it was impossible to draft legislative standards of fair procedure which would have any general applicability,<sup>16</sup> even in the limited field of administrative adjudication as contrasted with the general field of administrative procedure attempted to be covered by the "code" of the minority of the Attorney General's

<sup>14</sup> REPORT OF THE ATTORNEY GENERAL'S COMMITTEE ON ADMINISTRATIVE PROCEDURE (1941) 191-202.

<sup>15</sup> *Ibid.* at 203-247. Committee hearings were held but neither bill was enacted.

<sup>16</sup> BENJAMIN, ADMINISTRATIVE ADJUDICATION IN THE STATE OF NEW YORK (1942) 24-36.

Committee. It was the conclusion of both Benjamin and the majority of the Attorney General's Committee that improvement in administrative procedure was more apt to result from the use of their studies as a manual than from the imposition of statutory standards of procedure.<sup>17</sup>

More recent investigations have tended to follow the minority of the Attorney General's Committee. A detailed procedural statute was enacted as a result of the investigations of the Ohio Administrative Law Commission. The Conference of Commissioners on Uniform State Laws has approved a model act which sets up fairly elaborate legislative requirements for administrative procedure. In addition, a bill prepared by a committee of the American Bar Association is now pending in Congress which is a logical successor to the bill proposed by the minority of the Attorney General's Committee.<sup>18</sup> All of these proposals are based upon the theory that it is possible for the legislative branch of government to devise workable standards of administrative procedure, but a difference in theory is to be observed here also. The American Bar Association bill and the statute proposed by the Conference of Commissioners on Uniform State Laws attempt to cover all phases of administrative action and all types of administrative agencies. The Ohio statute is specifically limited to the field of licensing agencies but within that field it covers all phases of the administrative process, whether rule-making or adjudication is involved.<sup>19</sup>

The proposals offered by the Judicial Council of California do not follow the gradual education theory of the majority of the Attorney General's committee and the Benjamin report. Nor are they based upon the proposition that a single general statute can be drafted by the Legislature under which all types of administrative action and all administrative agencies can be covered. The Council's proposed statute expresses the conviction that legislative standards of fair procedure can be set up, but that they must be devised with specific reference to particular problems and functions. The administrative procedure statute proposed by the Judicial Council is intended to cover the formal, adjudicatory proceedings of state licensing and

<sup>17</sup> *Op. cit. supra* note 14, at 191; *op. cit. supra* note 16, at 11.

<sup>18</sup> The American Bar Association proposal is now pending in Congress as the McCarran-Summers bill (H. R. 5081, SEN. 2030). A similarly detailed proposal was advanced by the House Select Committee to Investigate Executive Agencies. (H. R. 5237.)

<sup>19</sup> REPORT OF THE OHIO ADMINISTRATIVE LAW COMMISSION (1942) 14-28.





disciplining agencies and provides definite legislative requirements for the kind of proceeding involved. It is a specific prescription for a specific ailment in the body politic. It is true, of course, that the underlying principles of the Council's proposals can be adapted to the action of any administrative agency. That adaptation, however, must be founded upon a careful examination and analysis of the administrative structure rather than upon *a priori* conclusions. If the California Legislature pursues the policy which it has inaugurated, a detailed "code of administrative procedure" may result. But it will be a code framed item by item and with specific reference to each kind of administrative problem. It is the Council's theory, in other words, that there is no easy legislative answer to the problems involved but that any legislative solution must be founded upon a kind of laboratory analysis and recommendation. The Council's proposals, therefore, are more modest in scope than are certain of the statutes proposed elsewhere, but they furnish the Legislature with the groundwork for far more detailed standards of fair administrative procedure than have been offered in other states.

These differences in theory should not obscure the obligation which the Council's work owes to similar studies made in other jurisdictions, though the ideas have been materially altered in adapting them to the needs of this state. For example, both the report of the Attorney General's Committee and the Benjamin Report emphasized the need for creating a permanent agency in state government which could exert a continuous pressure in the direction of improving administrative procedure. The former report contemplated that such an agency would also supervise the efforts of "hearing commissioners" who were to be trained and qualified persons used in the process of administrative adjudication. Such a provision for continuous improvement in California's administrative system has been incorporated in the Council's proposals, and the agency entrusted with that responsibility has also been given supervision over a panel of hearing officers whose services will be required in the process of administrative adjudication if the Council's proposals are adopted.

The State of California, acting through its Legislature, has undertaken the improvement of administrative procedure. In this article an attempt has been made to describe the approach which has been adopted in the solution of this problem. It is an approach which involves legislation, and the Legislature has wisely provided for an

intensive examination of the practical considerations upon which any legislation must depend. The duty of making this investigation was assigned to the Judicial Council, and in so far as the Council's proposals can be said to represent California's approach to the improvement of administrative procedure, it is an approach based upon the premise that any workable solution requires careful and precise legislative action, action which concentrates upon limited objectives and proceeds one step at a time.





TO RID CALIFORNIA'S NUMEROUS BOARDS AND COMMISSIONS OF THE ABUSES OF BUREAUCRACY, THE GOVERNOR ADVOCATED AND INSTALLED AN ADMINISTRATIVE SYSTEM CALLING FOR UNIFORM RULES OF PROCEDURE AND FOR FAIR, OPEN, AND ORDERLY HEARINGS.

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The statutes adopted by the 1945 Legislature fall into four broad classes. The first statute (Stats. 1945, ch. 867, Government Code, Sections 11500-11523), is the so-called "Administrative Procedure Act." This prescribes minimum standards of fair administrative procedure in the field of administrative licensing and disciplining. The procedure set forth is fairly detailed, and it is designed to apply to formal, contested hearings which are normally patterned closely after judicial proceedings. It is intended that all administrative agencies in state government which exercise this kind of power will be required to adhere to this standardized form of procedure, with such necessary minor variations by individual agencies as are possible without violating the provisions of the Act. ~~The second class are possible without violating the provisions of the Act.~~ The second class (Stats. 1945, ch. 870-902, 1495) consists of statutes amending the basic law governing each of the 36-odd state agencies which are covered by the Administrative Procedure Act. No attempt was made to require in general terms that certain agencies or certain activities be conducted in conformity with the Act. Rather, it was thought desirable to specify precisely, by amendment of the statutes governing each agency, which of its functions were to be governed by the statutory procedure. In this way it was possible to avoid doubts as to the scope of the statute's application and to avoid the inclusion of administrative functions not intended

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1. The Committee has been informed that the Government of the United States has been requested by the Government of the United Kingdom to provide information regarding the activities of the United States in the field of atomic energy. The Committee has been requested to provide information regarding the activities of the United States in the field of atomic energy.



to be covered.

The third class of statutes (Stats. 1945, ch. 869 and 1150) provides for the creation of a Division of Administrative Procedure in state government. This office, patterned upon the recommendations of the United States Attorney General's Committee on Administrative Procedure and the Benjamin Report in New York, is intended to furnish a permanent staff whose duty it will be to improve the procedures by which state agencies undertake to regulate the lives and property of citizens of the state. The Division is instructed to continue the study of the subject of administrative law and procedure and to submit its recommendations to the various agencies as well as to the Governor and the Legislature. Thus, California becomes the first state to create a central clearing-house for the common procedural problems of such state agencies. In addition, the Division of Administrative Procedure will maintain a staff or "pool" of qualified hearing officers who will be available on assignment to conduct the quasi-judicial proceedings of state boards under the Administrative Procedure Act. That Act requires the use of hearing officers, either from the "pool" or from the agency's own staff, in contested hearings. The hearing officer will be used as a referee to make a proposed decision, subject to the agency's action, or to preside at the hearing at which the agency itself will make the decision. This adoption of the hearing-officer device will, in large measure, avoid the criticisms which have been levelled at California administrative adjudications because of the combination of prosecutor and judge which has been all too prevalent in the past.

The first section of the report is devoted to a general survey of the situation.

The second section is devoted to a detailed description of the various projects.

The third section is devoted to a detailed description of the various projects.

The fourth section is devoted to a detailed description of the various projects.

The fifth section is devoted to a detailed description of the various projects.

The sixth section is devoted to a detailed description of the various projects.

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The fourteenth section is devoted to a detailed description of the various projects.

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The sixteenth section is devoted to a detailed description of the various projects.

The seventeenth section is devoted to a detailed description of the various projects.

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The twenty-fifth section is devoted to a detailed description of the various projects.

The twenty-sixth section is devoted to a detailed description of the various projects.

The twenty-seventh section is devoted to a detailed description of the various projects.

The twenty-eighth section is devoted to a detailed description of the various projects.

## UNIVERSITY OF CALIFORNIA, BERKELEY

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August 14, 1975

Mrs. Louise Heckendorf  
807 Paseo Alicante  
Santa Barbara, California 93103

Dear Mrs. Heckendorf:

We want to thank you for selecting The Bancroft Library as the archive in which to deposit your late husband's valuable scrapbooks records, and papers. They are an extremely valuable addition to the collections relating to California government and its political life.

To be specific, we are depositing:

1. The leather-bound scrapbook of clippings on Earl Warren's 1942 gubernatorial campaign.
2. A file of Governor Warren's speeches.
3. A speech by Percy Heckendorf delivered May 3, 1942.
4. "Instructions on Disaster Problems," a 44-page mimeographed manuscript that is the proceedings of a conference called by Attorney General Warren January 27, 1941.
5. "Manual for Disaster Preparedness Planning" pamphlet, state of California, California State War Council, November, 1944.
6. "War Council Manual," also state of California pamphlet, by Director of Civilian Defense, 1943.
7. A letter to Percy Heckendorf from General J. L. DeWitt, May 27, 1943.
8. Letter to Heckendorf from Colonel John C. Gray, air corps, May 10, 1943.
9. Proposed agenda for State War Council, written December 7, 1944.
10. Resolution of war council, cover letter dated May 28, 1943.
11. Eleven volumes of the minutes of California State War Council, from May 21, 1943 to August 4, 1944:  
Vols: May 21 (no vol. number), 1943; Vols IV, V, VI, XI, XII, XV, XVI, XVII, XIX. Duplicates of VI, V, XVI, XVII.





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12. Large volume of photographs of camouflage objectives, Santa Barbara County, Calif. (n.d.; after Pearl Harbor, probably).
13. "Regional Council for Civilian Defense, Region III, Proceedings of Training School at San Luis Obispo, June 4, 5, 6, 1941." 448 pp.
14. Pamphlet, State of California, Division of Administrative Procedure, "Laws Relating to Administrative Procedure, Effective Sept. 15, 1945."
15. Editorial, "Administrative Agencies," Journal of The State Bar of California.
16. Pamphlet, State of California, Division of Administrative Procedure, "Laws Relating to Administrative Procedure, Effective September 15, 1945." (duplicate)

Again, Thank you so much for contributing these to The Bancroft Library. Many of these are unique and therefore an irreplaceable addition to the archives of California history.

Sincerely,



Amelia R. Fry,  
Project Director,  
The Earl Warren Era Project.



## APPENDIX V

STATE OF CALIFORNIA  
DEPARTMENT OF PROFESSIONAL AND VOCATIONAL STANDARDS  
DIVISION OF ADMINISTRATIVE PROCEDURE



# LAWS RELATING TO ADMINISTRATIVE PROCEDURE



EFFECTIVE SEPTEMBER 15, 1945

THE UNIVERSITY OF CHICAGO  
PRESS

ADMINISTRATIVE  
TECHNIQUES



EDITED BY  
J. H. H. H. H.

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## I. ADMINISTRATIVE PROCEDURE ACT

(Stats. 1945, Ch. 867)

Government Code (Tit. 2, Div. 3, Pt. 1)

### CHAPTER 5. ADMINISTRATIVE PROCEDURE

11500. In this chapter unless the context or subject matter <sup>Definitions</sup> otherwise requires:

(a) "Agency" includes the State boards, commissions and officers enumerated in Section 11501 and those to which this chapter is made applicable by law, except that wherever the word "agency" alone is used the power to act may be delegated by the agency and wherever the words "agency itself" are used the power to act shall not be delegated unless the statutes relating to the particular agency authorize the delegation of the agency's power to hear and decide.

(b) "Party" includes the agency, the respondent and any person, other than an officer or an employee of the agency in his official capacity, who has been allowed to appear in the proceeding.

(c) "Respondent" includes any licensee against whom an accusation is filed pursuant to Section 11503 and any applicant for a license against whom a statement of issues is filed pursuant to Section 11504.

(d) "Hearing officer" means a hearing officer qualified under Section 11502.

(e) "Agency member" means any person who is a member of any agency enumerated in Section 11501 and includes any person who himself constitutes an agency.

11501. (a) The enumerated agencies referred to in Section <sup>Application</sup> 11500 are: <sub>of chapter</sub>

Board of Dental Examiners of California.  
 Board of Medical Examiners of the State of California.  
 Board of Osteopathic Examiners of the State of California.  
 Board of Nurse Examiners of the State of California.  
 State Board of Optometry.  
 California State Board of Pharmacy.  
 State Department of Public Health.  
 State Board of Public Health.  
 Board of Examiners in Veterinary Medicine.  
 State Board of Accountancy.  
 California State Board of Architectural Examiners.  
 State Board of Barber Examiners.  
 State Board of Registration for Civil Engineers.  
 Registrar of Contractors.  
 State Board of Cosmetology.

State Board of Funeral Directors and Embalmers.  
Structural Pest Control Board.  
Yacht and Ship Brokers Commissioner.  
Director of Professional and Vocational Standards.  
Secretary of State.  
State Fire Marshal.  
State Mineralogist.  
Director of Agriculture.  
Labor Commissioner.  
Real Estate Commissioner.  
Commissioner of Corporations.  
Department of Social Welfare.  
Social Welfare Board.  
Department of Institutions.  
Board of Pilot Commissioners for the Bays of San Francisco,  
San Pablo and Suisun.  
Board of Pilot Commissioners for Humboldt Bay and Bar.  
Board of Pilot Commissioners for the Harbor of San Diego.  
Fish and Game Commission.  
State Board of Education.  
State Board of Equalization.  
Insurance Commissioner.  
Building and Loan Commissioner.

(b) The procedure of any agency shall be conducted pursuant to the provisions of this chapter only as to those functions to which this chapter is made applicable by the statutes relating to the particular agency.

Appoint-  
ment of  
hearing  
officers

11502. (a) The Director of the Department of Professional and Vocational Standards has power to appoint a staff of hearing officers for the department as provided in Section 110.5 of the Business and Professions Code. Any agency requiring full-time hearing officers for the purposes of this act has power to appoint them for the particular agency. Each hearing officer shall have been admitted to practice law in this State for at least five years immediately preceding his appointment and shall possess any additional qualifications established by the State Personnel Board for the particular class of position involved.

(b) All persons now employed or on reemployment lists or in the military service who, pursuant to and in accordance with the terms and provisions of their civil service classifications and prior to the effective date of this act, shall have performed functions similar to those of a hearing officer in an agency may act as hearing officers in the same agency and shall not be subject to the qualifications provisions of subdivision (a).

Salary

(c) Full-time hearing officers serving pursuant to appointment under subdivision (a) shall be paid at the rate of not less than four thousand eight hundred dollars (\$4,800) per year.

Accusation  
form

11503. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense.

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It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

11504. (a) Proceedings to determine whether a license should be issued or renewed shall be governed by the provisions of this chapter except that: if the proceeding is commenced by the agency, a statement of the issues to be determined shall be served as provided in Section 11505 in place of the accusation; but if the hearing is held at the request of the respondent the provisions of Sections 11505 and 11506 shall not apply, and a statement of the issues to be determined together with the notice of hearing shall be delivered or mailed to the parties as provided in Section 11509.

Procedure  
for issuance  
or renewal  
of license

(b) If in any proceeding to determine whether a license should be issued or renewed the respondent fails to file a notice of defense, where one is required, or to appear at the hearing, and if the burden of proof is on the respondent to establish his right to the issuance or renewal of a license, Section 11520 shall not apply and the agency may act without taking evidence.

11505. (a) Upon the filing of the accusation the agency shall serve a copy thereof on the respondent as provided in subdivision (c). The agency may include with the accusation any information which it deems appropriate, but it shall include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506. The copy of the accusation shall include or be accompanied by a statement that respondent may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon him of the accusation, and that failure to do so will constitute a waiver of his right to a hearing.

Service of  
accusation;  
what  
included

(b) The statement to respondent shall be substantially in the following form:

Statement  
to  
respondent

Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying accusation is delivered or mailed to the agency within 15 days after the accusation was personally served on you or mailed to you, [here insert name of agency] may proceed upon the accusation without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled Notice of Defense, or by delivering or mailing a notice of defense as provided by Section 11506 of the Government Code to: [here insert name and address of agency].

(c) The accusation and all accompanying information may be sent to respondent by any means selected by the agency.

Manner of  
service



But no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent shall have been served personally or by registered mail as provided herein, or shall have filed a notice of defense or otherwise appeared. Service may be proved in the manner authorized in civil actions. Service by registered mail shall be effective if a statute or agency rule requires respondent to file his address with the agency and to notify the agency of any change, and if a registered letter containing the accusation and accompanying material is mailed, addressed to respondent at the latest address on file with the agency.

Notice of  
defense

11506. (a) Within 15 days after service upon him of the accusation the respondent may file with the agency a notice of defense in which he may:

- (1) Request a hearing;
- (2) Object to the accusation upon the ground that it does not state acts or omissions upon which the agency may proceed;
- (3) Object to the form of the accusation on the ground that it is so indefinite or uncertain that he can not identify the transaction or prepare his defense;
- (4) Admit the accusation in whole or in part;
- (5) Present new matter by way of defense.

Within the time specified respondent may file one or more notices of defense upon any or all of these grounds, but all such notices shall be filed within that period unless the agency in its discretion authorizes the filing of a later notice.

(b) The respondent shall be entitled to a hearing on the merits if he files a notice of defense, and any such notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file such notice shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. Unless objection is taken as provided in subdivision (a) (3), all objections to the form of the accusation shall be deemed waived.

(c) The notice of defense shall be in writing signed by or on behalf of the respondent and shall state his mailing address. It need not be verified or follow any particular form.

Amended  
or supple-  
mental  
accusation

11507. At any time before the matter is submitted for decision the agency may file or permit the filing of an amended or supplemental accusation. All parties shall be notified thereof. If the amended or supplemental accusation presents new charges the agency shall afford respondent a reasonable opportunity to prepare his defense thereto, but he shall not be entitled to file a further pleading unless the agency in its discretion so orders. Any new charges shall be deemed controverted, and any objections to the amended or supplemental accusation may be made orally and shall be noted in the record.

Time and  
place of  
hearing

11508. The agency shall determine the time and place of hearing. The hearing shall be held in San Francisco if the transaction occurred or the respondent resides within the First

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District Court of Appeal district, in the County of Los Angeles if the transaction occurred or the respondent resides within the Second or Fourth District Court of Appeal districts, and in the County of Sacramento if the transaction occurred or the respondent resides within the Third District Court of Appeal district. Provided that the agency, if the transaction occurred in a district other than that of respondent's residence, may select the county appropriate for either district; the agency may select a different place nearer the place where the transaction occurred or the respondent resides; or the parties by agreement may select any place within the State.

11509. The agency shall deliver or mail a notice of hearing to all parties at least 10 days prior to the hearing. The hearing shall not be prior to the expiration of the time within which the respondent is entitled to file a notice of defense.

The notice to respondent shall be substantially in the following form but may include other information: Form of notice of hearing

You are hereby notified that a hearing will be held before [here insert name of agency] at [here insert place of hearing] on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the hour of \_\_\_\_\_, upon the charges made in the accusation served upon you. You may be present at the hearing, may be but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to [here insert appropriate office of agency].

11510. (a) Before the hearing has commenced the agency Subpoenas shall issue subpoenas and subpoenas duces tecum at the request of any party in accordance with the provisions of Section 1985 of the Code of Civil Procedure. After the hearing has commenced the agency itself hearing a case or a hearing officer sitting alone may issue subpoenas and subpoenas duces tecum.

(b) The process issued pursuant to subdivision (a) shall extend to all parts of the State and shall be served in accordance with the provisions of Section 1987 and 1988 of the Code of Civil Procedure. No witness shall be obliged to attend at a place out of the county in which he resides unless the distance be less than 100 miles from his place of residence, except that the agency, upon affidavit of any party showing that the testimony of such witness is material and necessary, may indorse on the subpoena an order requiring the attendance of such witness. Witnesses from more than 100 miles

(c) All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the State or any political subdivision thereof, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in a superior court. Witnesses appearing pursuant to subpoena, except the Witness fees and expenses



parties, who attend hearings at points so far removed from their residences as to prohibit return thereto from day to day shall be entitled in addition to fees and mileage to a per diem compensation of \$3 for expenses of subsistence for each day of actual attendance and for each day necessarily occupied in traveling to and from the hearing. Fees, mileage and expenses of subsistence shall be paid by the party at whose request the witness is subpoenaed.

**Depositions**

11511. On verified petition of any party, an agency may order that the testimony of any material witness residing within or without the State be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set forth the nature of the pending proceeding; the name and address of the witness whose testimony is desired; a showing of the materiality of his testimony; a showing that the witness will be unable or can not be compelled to attend; and shall request an order requiring the witness to appear and testify before an officer named in the petition for that purpose. Where the witness resides outside the State and where the agency has ordered the taking of his testimony by deposition, the agency shall obtain an order of court to that effect by filing a petition therefor in the superior court in Sacramento County. The proceedings thereon shall be in accordance with the provisions of Section 11189 of the Government Code.

**Hearing  
officer to  
preside**

11512. (a) Every hearing in a contested case shall be presided over by a hearing officer. The agency itself shall determine whether the hearing officer is to hear the case alone or whether the agency itself is to hear the case with the hearing officer.

**Powers of  
hearing  
officer**

(b) When the agency itself hears the case the hearing officer shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law; the agency itself shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the hearing officer. When the hearing officer alone hears a case he shall exercise all powers relating to the conduct of the hearing.

**Disqualifi-  
cation of  
hearing  
officer and  
agency  
members**

(c) A hearing officer or agency member shall voluntarily disqualify himself and withdraw from any case in which he can not accord a fair and impartial hearing or consideration. Any party may request the disqualification of any hearing officer or agency member by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing can not be accorded. Where the request concerns an agency member the issue shall be determined by the other members of the agency. Where the request concerns the hearing officer the issue shall be determined by the agency itself if the agency itself hears the case with the hearing officer, otherwise the issue shall be determined by the hearing officer. No agency member shall withdraw voluntarily or be subject to disqualification if his dis-



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qualification would prevent the existence of a quorum qualified to act in the particular case.

(d) The proceedings at the hearing shall be reported by a phonographic reporter.

11513. (a) Oral evidence shall be taken only on oath or affirmation. Evidence rules

(b) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. If respondent does not testify in his own behalf he may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded. Admissibility of evidence

11514. (a) Evidence may be introduced by any party in affidavit form in lieu of oral testimony and shall be given the same effect as if the affiant had testified orally, provided that the opposing parties shall have the right, on request made prior to submission of the case for decision, to cross-examine the affiant. At the time the affidavit is introduced the agency shall give notice of the right of cross-examination and copies shall be delivered to the opposing parties. Evidence by affidavit

(b) Prior to the hearing the agency may mail or deliver any affidavits to respondent, together with a notice that it proposes to introduce such affidavits at the hearing in lieu of oral testimony, and that unless respondent, within 10 days after such mailing or delivery, or the expiration of the time to request a hearing, whichever is later, files a request to cross-examine a particular affiant at the hearing, his right to cross-examine such affiant shall be deemed waived. If within such time respondent requests the right to cross-examine an affiant, the affidavit of that affiant may be introduced in evidence only if the right to cross-examine him is afforded at the hearing.

(c) The notice to the respondent shall be substantially in the following form:

The accompanying affidavit of [here insert name of affiant] will be introduced as evidence against you. [Here insert name

of affiant] will not be called to testify orally and you will not be entitled to question him unless you notify [here insert name of agency] at [here insert address of agency] that you wish to cross-examine him. To be effective your request must be received by [here insert name of agency] on or before [here insert date].

(d) If the respondent fails to file a notice of defense or to appear at the hearing affidavits may be filed in support of the accusation and may thereupon be used as proof without any notice to respondent.

Official  
notice

11515. In reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency's special field, and of any fact which may be judicially noticed by the courts of this State. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the agency.

Amend-  
ment of  
accusation  
after sub-  
mission

11516. The agency may order amendment of the accusation after submission of the case for decision. Each party shall be given notice of the intended amendment and opportunity to show that he will be prejudiced thereby unless the case is reopened to permit the introduction of additional evidence in his behalf. If such prejudice is shown the agency shall reopen the case to permit the introduction of additional evidence.

Decision

11517. (a) If a contested case is heard before an agency itself the hearing officer who presided at the hearing shall be present during the consideration of the case and if requested, shall assist and advise the agency. Where a contested case is heard before an agency itself, no member thereof who did not hear the evidence shall vote on the decision.

Adoption  
of proposed  
decision of  
hearing  
officer

(b) If a contested case is heard by a hearing officer alone, he shall prepare a proposed decision in such form that it may be adopted as the decision in the case. A copy of the proposed decision shall be filed by the agency as a public record. The agency itself may adopt the proposed decision in its entirety, or may reduce the proposed penalty and adopt the balance of the proposed decision.

Procedure  
upon failure  
to adopt  
proposed  
decision

(c) If the proposed decision is not adopted as provided in subdivision (b) each party shall be furnished with a copy of the proposed decision. The agency itself may decide the case upon the record, including the transcript, with or without taking additional evidence, or may refer the case to the same or another hearing officer to take additional evidence. If the case is so assigned to a hearing officer he shall prepare a proposed decision as provided in subdivision (b) upon the additional evidence and the transcript and other papers which are part of



the record of the prior hearing. A copy of such proposed decision shall be furnished to each party. The agency itself shall decide no case provided for in this subdivision without affording the parties the opportunity to present either oral or written argument before the agency itself. If additional oral evidence is introduced before the agency itself no agency member may vote unless he heard the additional oral evidence.

11518. The decision shall contain findings of fact, a determination of the issues presented and the penalty, if any. The findings may be stated in the language of the pleadings or by reference thereto. The decision shall be in writing and certified as correct by the agency. Copies of the decision shall be delivered to the parties personally or sent to them by registered mail. Form of decision

11519. The decision shall become effective 30 days after it is delivered or mailed to respondent unless: a reconsideration is ordered within that time, or the agency itself orders that the decision shall become effective sooner, or a stay of execution is granted. A stay of execution may be included in the decision or if not included therein may be granted by the agency at any time before the decision becomes effective. Effective date of decision

If respondent was required to register with any public officer, a notification of any suspension or revocation shall be sent to such officer after the decision has become effective.

11520. If the respondent fails to file a notice of defense or to appear at the hearing, the agency itself may take action based upon the respondent's express admissions or upon other evidence. Nothing herein shall be construed to deprive the respondent of the right to make any showing by way of mitigation. Default cases

11521. (a) The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to respondent, or on the date set by the agency itself as the effective date of the decision if such date occurs prior to the expiration of the 30-day period. If no action is taken on a petition within the time allowed for ordering reconsideration the petition shall be deemed denied. Reconsideration

(b) The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to a hearing officer. A reconsideration assigned to a hearing officer shall be subject to the procedure provided in Section 11517. If oral evidence is introduced before the agency itself no agency member may vote unless he heard the evidence.

11522. A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed Petition for reinstatement or reduction of penalty

from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

**Review**

11523. Judicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure. Except as otherwise provided in this section any such petition shall be filed within 30 days after the last day on which reconsideration can be ordered. The right to petition shall not be affected by the failure to seek reconsideration before the agency. The complete record of the proceedings, or such parts thereof as are designated by the petitioner, shall be prepared by the agency and shall be delivered to petitioner, within 20 days after a request therefor by him, upon the payment of the expense of preparation and certification thereof. The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by a hearing officer, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case. Where petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record the time within which a petition may be filed shall be extended until five days after its delivery to him. The agency may file with the court the original of any document in the record in lieu of a copy thereof.

**Continuance**

11524. The agency may grant continuances at any stage of the proceedings.

**Contempt**

11525. If any person in proceedings before an agency disobeys or resists any lawful order or refuses to respond to a subpoena, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or is guilty of misconduct during a hearing or so near the place thereof as to obstruct the proceeding, the agency shall certify the facts to the superior court in and for the county where the proceedings are held. The court shall thereupon issue an order directing the person to appear before the court and show cause why he should not be punished as for contempt. The order and a copy of the certified statement shall be served on the person. Thereafter the court shall have jurisdiction of the matter. The same proceedings shall be had, the same penalties may be imposed and the person charged may purge himself of the contempt in the same way, as in the case of a person who has committed a contempt in the trial of a civil action before a superior court.

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11526. The members of an agency qualified to vote on any <sup>Mail vote</sup> question may vote by mail.

11527. Any sums authorized to be expended under this <sup>Charge</sup> chapter by any agency shall be a legal charge against the funds of the agency.

11528. In any proceedings under this chapter any agency, <sup>Power to administer oaths</sup> agency member, secretary of an agency or hearing officer has power to administer oaths and affirmations and to certify to official acts.

## II. DIVISION OF ADMINISTRATIVE PROCEDURE

(Stats. 1945, Ch. 869)

Business and Professions Code, Sections 110.5, 110.6

110.5. The department shall maintain a staff of hearing officers qualified under Section 11502 of the Government Code, who, together with any additional employees assigned for that purpose, shall constitute the Division of Administrative Procedure. The department may employ hearing officers on a permanent, part-time or intermittent basis and shall maintain a staff which is sufficient to fill the needs of the various State agencies. Upon request from any agency the director shall assign a hearing officer for any proceeding arising under Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, but such person shall be deemed an employee of the department and not of the agency to which he is assigned. Upon assignment such persons may be temporarily transferred for payroll purposes only to the agency to which they are assigned or they may be retained as employees of the department and the agency to which they are assigned charged pursuant to Chapter 3 of Part 1 of Division 3 of Title 2 of the Government Code with the cost of the services, including the salary and provisions for retirement, vacation and sick leave. When not engaged in hearing cases, hearing officers may be assigned by the director to perform other duties vested in the department, including those provided for in Section 110.6.

110.6. The department is authorized and directed, through its division of administrative procedure, to study the subject of administrative law and procedure in all its aspects; to submit its suggestions to the various agencies in the interests of fairness, uniformity and the expedition of business; and to report its recommendations to the Governor and Legislature at the commencement of each regular session. All departments, agencies, officers and employees of the State shall give the department ready access to their records and full information and reasonable assistance in any matter of research requiring recourse to them or to data within their knowledge or control.



### III. JUDICIAL REVIEW PROCEDURE

(Stats. 1945, Ch. 868)

#### Code of Civil Procedure, Section 1094.5

1094.5. (a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in the inferior tribunal, corporation, board or officer, the case shall be heard by the court sitting without a jury. All or part of the record of the proceedings before the inferior tribunal, corporation, board or officer may be filed with the petition, may be filed with respondent's points and authorities or may be ordered to be filed by the court. If the expense of preparing all or any part of the record has been borne by the prevailing party, such expense shall be taxable as costs.

(b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(c) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence; and in all other cases abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(d) Where the court finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before respondent, it may enter judgment as provided in subdivision (e) of this section remanding the case to be reconsidered in the light of such evidence; or, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, the court may admit such evidence at the hearing on the writ without remanding the case.

(e) The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in the light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law but the judgment shall not limit or control in any way the discretion legally vested in the respondent.

(f) The court in which proceedings under this section are instituted may stay the operation of the administrative order or



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decision pending the judgment of the court, provided that no such stay shall be imposed or continued if the court is satisfied that it is against the public interest. If an appeal is taken from a denial of the writ, the order or decision of the agency shall not be stayed except upon the order of the court to which such appeal is taken. If an appeal is taken from the granting of the writ, the order or decision of the agency is stayed pending the determination of the appeal unless the court to which such appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of such proceedings.

## APPENDIX

### LIST OF STATUTES MAKING ADMINISTRATIVE PROCEDURE ACT APPLICABLE TO PARTICULAR STATE AGENCIES

1. Board of Dental Examiners	Stats. 1945, Ch. 897	Business and Professions Code 1670, 1745, 1747
2. Board of Medical Examiners	Stats. 1945, Ch. 896	Business and Professions Code 2360, 2364, 2555
3. Board of Osteopathic Examiners	Same as Board of Medical Examiners, see Business and Professions Code, 2940	
4. Board of Nurse Examiners	Stats. 1945, Ch. 895	Business and Professions Code 2750
5. State Board of Optometry	Stats. 1945, Ch. 894	Business and Professions Code 3090
6. California State Board of Pharmacy	Stats. 1945, Ch. 893	Business and Professions Code 4210
7. State Department of Public Health	Stats. 1945, Ch. 892	Business and Professions Code 4530;
	Stats. 1945, Ch. 1418	Health and Safety Code 1406, 1409, 1413.5, 1615; Insurance Code 11503
8. State Board of Public Health	Stats. 1945, Ch. 891	Business and Professions Code 1265;
	Stats. 1945, Ch. 1309	Health and Safety Code 1222, 1227; General Laws, Act 1248, Sec. 9
9. Board of Examiners in Veterinary Medicine	Stats. 1945, Ch. 890	Business and Professions Code 4875
10. State Board of Accountancy	Stats. 1945, Ch. 1353, Sec. 3 (Note: Sec. 1 repeals Stats. 1945, Ch. 898; Business and Professions Code 5019)	
11. California State Board of Architectural Examiners	Stats. 1945, Ch. 1231	Business and Professions Code 5561.5 (Note: supercedes Stats. 1945, Ch. 889; Business and Professions Code 5560)
12. State Board of Barber Examiners	Stats. 1945, Ch. 888	Business and Professions Code 6570
13. State Board of Registration for Civil Engineers	Stats. 1945, Ch. 887	Business and Professions Code 6776, 8781
14. Registrar of Contractors	Stats. 1945, Ch. 886	Business and Professions Code 7073, 7091
15. State Board of Cosmetology	Stats. 1945, Ch. 885	Business and Professions Code 7425
16. State Board of Funeral Directors and Embalmers	Stats. 1945, Ch. 884	Business and Professions Code 7686
17. Structural Pest Control Board	Stats. 1945, Ch. 883	Business and Professions Code 8620
18. Yacht and Ship Brokers Commissioner	Stats. 1945, Ch. 882	Business and Professions Code 8952
19. Director of Professional and Vocational Standards	Stats. 1945, Ch. 881	Business and Professions Code 7570
20. Collection Agency Examining Board (formerly under Secretary of State)	Stats. 1945, Ch. 631	Business and Professions Code 6926
21. State Fire Marshal	Stats. 1945, Ch. 880	Health and Safety Code 13320, 13613
22. State Mineralogist	Stats. 1945, Ch. 879	Public Resources Code 2256, 2257
23. Director of Agriculture	Stats. 1945, Ch. 900	Agricultural Code 120, 215.12, 352, 380.58, 723, 737.11, 1041, 1043, 1072, 1175, 1241, 1254
24. Labor Commissioner	Stats. 1945, Ch. 878	Labor Code 1584, 1597, 1663
25. Real Estate Commissioner	Stats. 1945, Ch. 877	Business and Professions Code 10100
26. Commissioner of Corporations	Stats. 1945, Ch. 902	General Laws, Act 3814, Secs. 7.5, 9.5, 23.5; Act 3815, Sec. 3.5; Acts 5825 (1) and (2), Secs. 8, 13; Act 1887, Sec. 15.3; Act 7700, Secs. 7, 12
27. Department of Social Welfare	Stats. 1945, Ch. 876	Welfare and Institutions Code 1624, 1625, 2304, 2305, 2355
28. Social Welfare Board	Stats. 1945, Ch. 876	Welfare and Institutions Code 2356
29. Department of Mental Hygiene (formerly Department of Institutions, changed by Stats. 1945, Ch. 965)	Stats. 1945, Ch. 875	Welfare and Institutions Code 5703, 5753
30. Board of Pilot Commissioners (S. F.)	Stats. 1945, Ch. 874	Harbors and Navigation Code 1101, 1192, 1193
31. Board of Pilot Commissioners (Humboldt Bay)	Stats. 1945, Ch. 873	Harbors and Navigation Code 1290
32. Board of Pilot Commissioners (San Diego)	Stats. 1945, Ch. 872	Harbors and Navigation Code 1371, 1392
33. Fish and Game Commission	Stats. 1945, Ch. 870	Fish and Game Code 59.5, 587, 995.1, 1074
34. State Board of Education	Stats. 1945, Ch. 871	Education Code 113, 12045, 12752, General Laws, Act 7521, Secs. 2.5, 4
35. State Board of Equalization	Stats. 1945, Ch. 1495	General Laws, Act 3796, Secs. 21, 30, 40, 41
36. Insurance Commissioner	Stats. 1945, Ch. 901	Insurance Code 700, 704, 851, 1640.5, 1707, 1720.06, 1731, 1732, 1807.5, 1821
37. Building and Loan Commissioner	Stats. 1945, Ch. 869	General Laws, Act 986, Secs. 11.04, 11.05
38. State Board of Cleaners	Stats. 1945, Ch. 1517	Business and Professions Code 9595
39. Board of Social Work Examiners	Stats. 1945, Ch. 1508	Business and Professions Code 9028.5
40. Board of Chiropractic Examiners	Stats. 1945, Ch. 869	Business and Professions Code 102 (Effective when board adopts Administrative Procedure Act)





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Earl Warren Oral History Project

Tom C. Clark

COMMENTS ON THE JAPANESE-AMERICAN RELOCATION

An Interview Conducted by  
Miriam Feingold





Tom Clark



Colonel Karl Bendetsen and Tom Clark, ca. 1942.



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## INTERVIEW HISTORY

Justice Tom C. Clark was interviewed by the Earl Warren Project of the Regional Oral History Office in order to record his reminiscences of his role in the Japanese-American relocation. It had been hoped that the interview could also cover the Justice's recollections of Earl Warren as Chief Justice and his own experiences on the Court. Time, however, did not permit this. Although Justice Clark is retired from the Supreme Court, he still serves occasionally on the U.S. Circuit Court and he otherwise maintains a busy schedule. Moreover, his visits to the West Coast are infrequent. We therefore were most grateful when the Justice indicated, in the early summer of 1972, that he would be in San Francisco in mid-August to address the National College of Advocacy and attend the American Bar Association Convention, and could work a short interview into his already overflowing schedule.

### Conduct of the Interview

A single, forty-five minute interview was held on the morning of August 12, 1972, at the Hilton Hotel in San Francisco where Justice Clark was staying and the ABA was meeting. A quiet corner was located to conduct the interview at the end of a corridor, where a small table and some easy chairs provided an almost ideal interview setting.

### Editing

Editing of the transcribed, taped interview was done by the interviewer. Few corrections or changes were necessary. Justice Clark carefully reviewed the edited text and made a number of revisions. His secretary, Miss Maggie Bryan, retyped the manuscript in its final form, for which we are indeed grateful.

### Narrative Account of the Interview

Because time for the interview was limited, discussion centered primarily on a few questions pertaining to the Japanese-American relocation. Two other matters were also briefly reviewed.



In 1941, Justice Clark relates, when the U.S. entered World War II, he was in California heading the Pacific Coast office of the U.S. Justice Department's anti-trust division. Shortly after the attack on Pearl Harbor, Attorney General Francis Biddle appointed him civilian coordinator to the Western Defense Command, and Justice Clark begins the interview with a description of duties in that post. His office, he relates, was deluged with reports of alleged Japanese espionage activity, which investigation usually proved to be groundless.

In reviewing the concern over the location of Japanese farms in California, Justice Clark disagrees with the assessment by Earl Warren, then California's attorney general, that lack of evidence of Japanese-American sabotage was itself evidence of the existence of a conspiracy to commit sabotage. But he adds that relocation may have prevented outbreaks of tension between the Japanese and other minority groups and that it was in part a response to anti-Oriental hysteria whipped up by the Pearl Harbor attack. He describes his own experiences after a Japanese missile was reported to have landed on a Santa Monica beach.

Justice Clark comments on the attitude toward relocation of several federal officials, and outlines the functioning of the federal task force assigned to oversee the relocation process. He notes that after the war a commission was appointed to coordinate the return of property to the evacuees.

Turning to other matters, Justice Clark discusses briefly the California tidelands oil case, which he prosecuted as U.S. Attorney General.

Justice Clark served on the Supreme Court when Earl Warren was Chief Justice. On tape he reminisces briefly about the 1954 Brown v. Board of Education school desegregation decision, commenting on Warren's role in uniting the court in the unanimous decision, and the associate justices' desire that Warren write the Court's opinion. He notes that had President Eisenhower insisted on compliance with the decision, much of the later trouble could have been prevented.

Miriam Feingold  
Interviewer-Editor

8 September 1975  
Regional Oral History Office  
486 The Bancroft Library  
University of California at Berkeley



Date of Interview: 12 August 1972

Civilian Coordinator to the Western Defense Command

MF : We want to talk to you about your reminiscences of the Japanese-American relocation in California, and I thought that since our time is limited we could discuss just one or two points. Could you describe how you came out to California on that mission?

Clark: Well, as you may know, I had three offices out here for the Anti-Trust Division of the Department of Justice of the United States. The Headquarters Office was in Los Angeles, with branches in San Francisco and Seattle.

When the war came on, I was in trial of a case in San Francisco; and soon after that the Attorney General of the United States requested that I come to Washington, which of course I did. He asked me to become a civilian coordinator to the Western Defense Command, which was then commanded by General John DeWitt, who had his headquarters in the Presidio. They told me that at that time -- about Christmas 1941, the plan was to secure the enactment of legislation that would permit General





Clark;

DeWitt to lay down curfews and other security procedures that would control the movement of people within designated military zones which he might define after receiving authority from Congress.

When I came back, we began a campaign to acquaint the public with the proposed program. As the coordinator, I received considerable publicity which projected a rash of mail and telephone calls and things of that kind. We had no separate office from which to handle the project nor did I have a special staff. I used my anti-trust staffs. We had about ten lawyers in San Francisco, about fifteen in Los Angeles and four or five in Seattle.

Of course, as you know, the area in which the people of Japanese descent lived was largely in Southern California. Altogether there were about 115,000 of them in the three States, and I'd say that seventy-five to eighty percent of them were in Southern California.

We began to get quite a number of letters that were of a threatening nature as well as phone calls. The party would say that we had better get the "Japs", as they called them, out, otherwise



Clark: we'd find them dead. Others would give me leads on what they [the Japanese] were doing. For example, a call would come in that gave us some information about a neighbor signalling out to sea from Santa Monica.

We used the ONI (the Office of Naval Intelligence) and the FBI, which is in the Department of Justice, as you know, as our investigative arm. After they had looked into the signal complaint, they would report back to me that this signal out to sea was only someone who had pulled the windowshade down but it was not down at the right level at which they wanted it. They would then let it up a little, like we often do. The shade has a tendency to get stuck at one level.

Then I'd get tips advising that there were Japanese admirals living in the United States, incognito, and that they had their head plumage and their uniforms. ONI would check into that and we'd find that these parties were members of lodges such as the Masonic Lodge or something of that kind. So, frankly we found most of these tips fruitless. The problem, I think, was largely an economic one. Like other Orientals, the Japanese suffered statutory



Clark: restrictions in California for many years. As a consequence, land was not available to them. They are what I call great truck gardeners. By that I mean to say that they can raise vegetables and fruit of that type possibly better than any other people in the world.

So when they could not get land or lease it, they would try to find abandoned land around places where no one else would work, such as lake dams, reservoirs, and high installation wires, or electrical transmission stations or even in switchyards, outside cities and in rural areas. They would till this land -- that is what's left of it. They would usually have to move rocks and bushes and weeds out. Before long, they would have a pretty good vegetable garden.

Then when the crop was in, people would say, "Well, the rascals have got the best gardens in the world" or "They're located below the dam, or at the high tension wire station, or in the switchyard in order to carry out sabotage. That's why they're there." But, as a matter of fact, they had been there for years and had tilled a little plot of ground to make both ends meet.





The Question of Sabotage

- MF: I wanted to ask you about that land question because I think the Attorney General's office in California, which at that time was headed by Earl Warren, believed that at least in many cases the Japanese had located in these areas for reasons of sabotage or at least that it was more than coincidence that the Japanese were clustered around railroad switch yards, reservoir dam sites, etc.
- Clark: Well, the Chief, then Attorney General Warren, discussed this with me. But I think he was wrong about it. We had no incidents of sabotage whatsoever.
- MF: Do you remember Chief Justice Warren and Percy Heckendorf, who was then the district attorney of Santa Barbara County, presenting you with a map showing the Japanese locations?
- Clark: Yes, I don't remember the district attorney, but I remember the Attorney General did. They had a map stuck with small pins, as I remember, of different colors marking the location of the Japanese. It was hanging on the wall of the Attorney General's Office in San Francisco, I believe. It showed that the people of Japanese descent were living near strategic spots;



Clark: however they never attempted any sabotage.

MF: As I remember, one of the things that Attorney General Warren argued at that point was the fact that there was no sabotage was itself suspicious.

Clark: Well, that's a strange argument. But my job was to assist in moving them out and I did that. However, I must say that I got back to Washington as soon as I could. I didn't care for it, and I should not have participated in it.

I talked to the Attorney General several times, both in Los Angeles and in San Francisco. We went to Sacramento once or twice to see Governor Olson, who was somewhat opposed to the removal. I fully understood Warren's position which was that there were some frantic people who thought we were going to be sabotaged. He himself believed this was true.

I really think, as I look back (hindsight is always better than foresight) that perhaps we did save some lives by moving them -- their own lives. Over the years Koreans and Japanese have been very bitter enemies. We would find sometimes one dead -- either Korean or Japanese. I think that as time went on, people became much more antagonistic, and I believe would have supported forceable removal. Certainly the press would have for it was constantly



Clark: playing up the danger of sabotage.

The Attitudes and Functions of Federal Agencies  
Toward Relocation

MF: When you were first appointed, what was the attitude of the various federal government departments toward what to do with the Japanese. Let's start with the Justice Department: what was the attitude of Attorney General Biddle at that time?

Clark: Well, of course I'd been out here, you know. I'd had these offices here. I came here in 1940, or almost a year and a half before Pearl Harbor. I think it would be fair to say that Mr. Biddle was trying to carry out instructions from the President. Mr. Biddle was a very -- well, some would tag him as a ultra liberal. I rather think that he was opposed to relocation in his heart. But, there's no question in my mind, he had talked to the White House and they had directed him. I rather think that the military insisted on the removal. Mr. McCloy headed the advisors.

I remember I used to make speeches, and I said: "When you hire a doctor, you usually do what he says, or you get another doctor. And so, we have our Army people and they tell us to do this and so we must try to do this with as little disruption as possible."





MF: Was the Army in favor of an evacuation all along?

Clark: Well, I talked with General DeWitt every day. He and I flew all over the western part of the country, locating campsites and things like that. His program was initially a curfew one. We instituted a curfew and I went up to Portland, Oregon, to try a case in which a man of Japanese descent was arrested for staying out after curfew. (I think it was nine in the evening). Judge Fee decided against me on it and the United States Court of Appeals reversed, as I remember. I believe the curfews started in February or March, 1942, but by May of that year the program had become pretty firm that the Japanese would be removed. Indeed, Mr. McCloy came out as he was Assistant Secretary of War -- we didn't have a Defense Department then but separate services - the War and Navy Departments.

MF: Patterson was Under Secretary and Stimson was the Secretary.

Clark: Well, he came out and brought a group of people with him, among them Milton Eisenhower, the former president's brother, who was in the Agriculture Department at that time. He also



Clark: brought Mr. Szymczak, who was a Governor of the Federal Reserve Bank; and also the head of the Census Bureau. We took over the Worth Hotel here in San Francisco, down on Market Street, not far from the old Empire Hotel which is now a Government building.

It was about five or six floors, as I remember. We took it over when it became evident that we were not going to have sufficient office space to handle the work out at the Presidio, which was also farther from downtown. The Census Bureau moved out its raw files. As you know, they take the census every ten years, and it just happened that it had been taken in 1940, the year before. So, they had excellent data to work with because it was almost current. They would lay out on tables various city blocks where the Japanese lived and they would tell me how many were living in each block. Then, the Army engineers prepared housing; we started with the Santa Anita racetrack and turned the stalls into nice apartments. The Army would designate certain city blocks where the Japanese lived. A processing station, as it was called, would then be opened up in the designated area and all persons of Japanese descent



Clark:           were directed to report to that station and to bring with them all electronic devices, such as radios, as well as firearms and anything of that nature.

On the day that the Army selected for removal, these people would report to the processing station with their clothing, personal effects, etc. and the Army would move them by buses or by train to the camp where they were to stay for the duration. Prior to removal, the appropriate Government agency would take over any business operation of the Japanese. Mr. Eisenhower headed this up and would place someone in charge of the growing crops. Mr. Szymczak, of the Federal Reserve Bank, would take the banks. The job was divided up according to the specialty involved, and in that way we were able , with fair accuracy, to appraise the assets of each one and in that way keep a record of not only the individuals but also their properties.

Later on, as you know, Congress created a Commission that attempted to reimburse those whose property was confiscated. Some say that they received as little as ten percent out of it, but I rather doubt that myself. I think, knowing the members of the Commission, that they were very generous in their awards as they should have been.





MF: Can we back up just a bit, back to when you first took charge. What was the attitude then of Secretary of War Stimson toward what ought to be done?

Clark: I never talked to Mr. Stimson. I knew him, but at that time I was rather low down on the totem pole, and I only talked to those people who approached me [laughter] as I did with the Attorney General.

But, the War Department itself, of course, was favorable to the evacuation; that is, I think they rather set the policy.

MF: Speaking about decisions, there was a meeting in mid-February in Washington at Attorney General Biddle's home attended by several representatives of the War Department, and I think you were there and Mr. Ennis and Mr. Rowe and Colonel Bendetsen and General Gullion.

Clark: I knew all those people, but I don't have any recollection of the meeting.

MF: Maybe you weren't there. I thought that I had read that you were.

Clark: Perhaps I was.

MF: Well, the reason I wanted to ask about the meeting was that this meeting had been called to discuss



MF: what to do about the Japanese question, and my impression of the meeting is that the Justice Department people there were arguing that the present measures were sufficient and that there didn't need to be an evacuation of Japanese-American citizens at that point.

Clark: That is true. The Department was handling the Germans and Italian residents on a prosecutive basis, singling out those who were potential troublemakers, and we thought that possibly we could do the same with the Japanese. I must say, however, that the Japanese were concentrated in small areas, mostly in California. This was not true of the Germans and Italians.

MF: You had a larger population to work with overall.

Clark: Well, there was also another problem -- of color. People were able to single out the Japanese while the other nationalities were not so easily discernible. One couldn't tell a German or an Italian, walking down the street, but you could recognize a Japanese. So I think that was one cause of trouble. Another thing was that, we have to face it -- the West Coast was more allergic to the Oriental. They had a yellow peril fever for years -- not only in legislative action but in the press.



Clark: I remember well, the Los Angeles Times ran big headlines -- I suppose you have all those clippings

MF: Yes. The reason I was interested in this meeting was because it seemed to me that it was at that point that Attorney General Biddle changed his mind or at least agreed to accept the Army's proposals for general evacuation, and I was wondering if you knew what made him change his mind.

Clark: Well, from talking with him later -- I don't remember the meeting but I was in a conversation with him almost every day on the telephone.

See, I had dropped my anti-trust work and traveled up and down the west coast. Indeed, United Airlines issued a small plaque to passengers who had flown a hundred thousand miles. I flew that much in the few months that I was in this work.

So, although some say that he was too theoretical, I found Mr. Biddle to be very realistic. I think that he came to the conclusion that perhaps, the Army had the responsibility to maintain order here and to win the war, and they were telling him in pretty strong language that this was a necessity, a must. I think that emanated largely from the War Department, rather than from General DeWitt. I don't think he was responsible.





MF: Oh really? I was going to ask you what your assessment of General DeWitt was.

Clark: Well, he was a very level headed old tar, you might say -- he'd been in the Navy. I don't know what they call former Navy men in the Army. He, of course, was a strong minded person, and I think he rather believed that they could take care of the Japanese problem. I really think that ONI felt that way and I know the FBI did.

But the circumstances were such that you have to live it to really understand it. For example, once I came up here to San Francisco. I was trying a case in Judge St. Sure's court at the time of Pearl Harbor. It was on a Sunday. My office was on the floor above his courtroom. There wasn't any flooring directly above his courtroom. They had a narrow gangplank that you'd walk along - we used to call it a catwalk - and I'd have to walk through there to get to my small office. Quite often the Judge was very kind to me and he'd let me use his courtroom to organize my exhibits, etc.

So, I was at the office on Sunday when Pearl Harbor came. I was working on this case. Everybody became frantic. Some people claimed that



Clark: they saw Japanese submarines in the Golden Gate and bugaboos like that. The hotels required all lights to be off with only one small light in the elevator; all windowshades were drawn and people were understandably alarmed, really alarmed. And there were some flareups. In Santa Monica it was claimed that a live bomb had been thrown ashore. Some people thought that it was a one man Japanese submarine. As I remember, the matter was never solved though the remnants of what appeared to be a missile were found on shore.

One night, I remember, there appeared to be a raid on Los Angeles. I'd flown down from San Francisco or Seattle or somewhere. We had a maid of German descent ourselves, most reliable and patriotic to the United States. Our home was in Beverly Hills. I had returned about twelve or one o'clock and the maid came to the foot of the stairs. I was upstairs and the maid's room was on the first floor. She called loudly up to me: "My Gott, my Gott, we're raided" (she spoke with a broken accent).

I went running out on the sundeck just off our bedroom, and I saw some searchlights that were converging toward Santa Monica. I thought I saw a plane out that way, some seven or eight miles from



Clark: where we lived. The next morning the papers had big headlines, "Los Angeles Bombed" and "L.A. Raided", but it was pure hysteria. I got stacks and stacks of telegrams and letters. In those days Western Union was more popular than it is now.

So, I think that you have to live it to understand the feeling Californians had about the people of Japanese descent after Pearl Harbor. It might be that we solved some problems by the evacuation, and I'm sure that some of the Japanese would have physically suffered if they had been permitted to stay in their homes.

#### After Relocation

MF: I found a note in one of the brief biographies of you that in September of '45, when you were Attorney General, you were in office when about 6,700 Japanese aliens were interned at the Department of Justice camps or at the War Relocation Authority segregation center at Tule Lake. I hadn't been familiar with an internment that late and I was wondering if you remember that?





Clark: That was after the war. No, I thought all of them were before the war ended. You see, soon after we began to remove them, Congress created what we call the War Relocation Authority. Milton Eisenhower became the first Director, but he wasn't there very long. However it took over the management of all the camps.

As I remember, quite a number of the evacuees renounced their citizenship -- many of those who were Nisei. Later I believe Congress passed an act giving them the right to renounce their renouncement and retain their citizenship. However, I think some five thousand American-born people of Japanese descent moved to Japan after the war. While making a short TV program not long ago, the interviewer told me that they had never returned here.

MF: That's quite a number.

Clark: I think there were less -- I doubt if there were that many.

#### The Legal Cases

MF: Were you involved at all with the Japanese cases, Hirabayashi, Korematsu, and Endo?

Clark: I did not appear as counsel in those cases, no. I may have sent in some suggestions for the briefs on them, although I don't remember it. When I



Clark: returned to Washington, I was placed in charge of the War Frauds unit. It was an appendage to the Anti-Trust Division.

Then, in 1943 I was appointed Assistant Attorney General by President Roosevelt and was assigned to the Anti-Trust Division of the Department. I may have conferred with some of the people who argued those cases, but I don't remember even attending the argument.

MF: One of the points raised in those cases, and also a point that is made by a number of people who have written on the question, is that there should have been a review of the military decision to evacuate the Japanese-Americans. The factual decision was never subjected to any review as far as I know. It started and ended at the top echelon.

Clark: Well, those facts were largely prepared by Colonel Bendetsen, I suppose. He was in the Army and was Assistant to General DeWitt, and a very capable fellow. He went around the country with me, too. I have several pictures of us at meetings on the location of camps in Utah, Idaho, and Colorado.

MF: It would be interesting to see those pictures.

Clark: I would rather think that he possibly prepared the findings along, of course, with some Army staff people. I think you'll find that the findings were prepared after I returned to Washington. I left about March



of 1942.

MF: General DeWitt's final report went into Washington in February and then the executive order came in mid-February.

Clark: Well, I was here then so I possibly knew about it. I may have had some part in it. I don't recall.

The Tidelands Oil Question and Ed Pauley

MF: We'd also at some point like to talk to you about the court, but I have just a couple of questions now. One of them is that we're going to be talking to Ed Pauley, and we wondered if he was active at all in the tidelands controversy and what his role was?

Clark: Well, I don't remember Pauley being in it at all. Ed stayed in Washington for a considerable part of the time. I would imagine that he would have been in it, but possibly at the California level.

You see, what happened in that case was that Mr. Biddle filed that suit in the district court when I was Assistant. I was the head of the Criminal Division; and when I became Attorney General, that case was pending. He alleged in the complaint that jurisdiction was present in the district court under a lease that Long Beach





Clark: had made with the driller. However he did not sue California because jurisdiction would lie in the United States Supreme Court. While it was really a suit against California and Long Beach, it was filed against the lessee and driller. I thought the controversy should be in the Supreme Court so I dismissed it and filed an original suit against California in the Supreme Court, which I later argued.

There was a lot of pulling and hauling. As a matter of fact, I believe I do remember. It seems to me that Ed did take me down to look at some of those wells that were whip-stocking, I think they call it. They drill them from the shore, and the hole is slanted so as to reach out from the shore to the oil sands in the marginal sea. And I think he took me to lunch and then we went down to Long Beach or near there to look at some of those offshore installations with this whip-stocking procedure. It must have been after I filed the suit because Mr. Biddle had a press conference on the last day that he was Attorney General. He facetiously told the press that he was leaving me some nuggets. One was that, and another was a motion picture case. I've forgotten a third case.



Clark: I would imagine that I filed the tidelands case pretty quickly after that in the Supreme Court. We argued the case about '46 or '47. So, that's the only time I remember, although he [Pauley] may have called on me there in Washington.

The California defense was largely handled by private lawyers, although the State Attorney General was in it. It was about the time when the Chief was elected Governor. It must have been about '42 or '43.

MF: It was '42.

Clark: So, I've forgotten who was Attorney General then -

MF: It may have been Bob Kenny.

Clark: Maybe. Well, anyway they had employed some private counsel. I suppose that the oil people had a lot to do with that. Anyway it was argued by private counsel, though I think the Attorney General was a part of it. Price Daniel, then Attorney General of Texas, argued in the California case too, as amicus curiae.

Chief Justice Earl Warren and Brown v. Board of Education

Clark: Of course we had Brown there for some time before. We had sent it back once just to gain some time. We had decided Sweatt and Painter - a case from



Clark: Texas involving the law school, a graduate school case also, so the ground was laid for it. The Chief, of course, has a very fine way of being able to bring people together, so I rather think that it did have some weight. However you must remember that the Justices vote individually. So, it wouldn't make much difference. I remember that at first he thought that perhaps Justice Black should write the opinion, but we all felt that he [Warren] should. He had just come on the Court.

Indeed, you know, the case had been set before he had been appointed. We had carried it over from the previous Term. The Court recesses about the middle of June when we finish the cases that are ripe for decision. Under the statute the Court begins its Term the first Monday of October. As I said, we had carried this case over and set it for reargument. We had heard one argument already. And I believe it was set for argument in October originally -- during the second week of court. The first week we discuss and decide petitioner certiorari and appeals as to which argument will be heard. But the case was put over so the Chief Justice could study it.





Clark: We invited a group of people -- the State Attorneys General and others -- to get a broader coverage. The fact about it is that we had been waiting to get a little bit more perspective in the argument by waiting for more cases. We had cases from South Carolina and Kansas, Virginia and West Virginia, from Delaware and one from the District of Columbia. They were consolidated at argument.

So I would say that he [Warren] certainly was able to bring the Justices together more than Chief Justice Vinson. Warren was new on the Court, had no problems with any of the Justices, and had an aptitude for conciliation. But I rather think that most of the Justices had come to a conclusion by June of the previous year as to what they would do. The nuances of it, whether it could be a class action or whether individual cases would have to be brought were not decided. There may have been one or two on the fence, but most of them had come to rest, as we call it.

MF: Why did you want the Chief Justice to write the opinion?



Clark: Well, we feel and we still do, that in cases of great moment that the Chief Justice has more prestige. Most people think he runs the Court and we know the image of justice is just as important as justice itself, and so we felt that -- particularly those of us from the South -- that it was going to be a difficult decision for the South to digest. If it came from not only a unanimous court but also by the Chief Justice, it would have the greatest weight that it would be possible to muster, and in that way would be more acceptable.

I think that if President Eisenhower had come through more quickly in our support, the decision would have been accepted, and the children would not have had to wait all these years. But he dragged his feet. The South traditionally looks to Virginia for leadership in education. I went to school in Virginia myself.

At first the Governor of Virginia came out saying that Virginia always obeys the law and it would obey the orders of the Court. But in about thirty to sixty days, Senator Byrd indicated he thought otherwise. So he commenced to talk more politics than law. The first thing we knew, in



Clark: addition to Virginia, states like Louisiana and Mississippi and Florida and others began to fret about it and were soon in open rebellion. If President Eisenhower had come out strong and said we must obey the orders of the Court, I don't think we would have had nearly as much trouble as we did. He did take action in Little Rock, but that came late, four or five years.

MF: By that time I'm sure tempers were aroused in the South, and it was a more difficult situation with which to cope.

Clark: I think most of the Justices wrote up little memoranda and passed on suggestions that possibly the Chief Justice used. I remember we carried the case over for several months in order that we might let it gel, you know, and think about it. You always get a little bit better decision that way. So, I think that it and one or two other cases that we had while I was there were really the product of the whole Court. Quite often in some cases that's not true.

In the segregation case I think the fact that practically all of our cases subsequently were unanimous





Clark: indicates to an outsider that there was unanimity of viewpoint. I remember Justice Jackson was sick. He was in the hospital and died about six months later. But he left his sick bed and came to Court the day we announced the decision. That was May 17, 1954.

Transcriber: Marilyn Fernandez

Final Typist: Maggie Bryan



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Earl Warren Oral History Project

Edward J. Ennis

A JUSTICE DEPARTMENT ATTORNEY COMMENTS  
ON THE JAPANESE-AMERICAN RELOCATION

An Interview Conducted by  
Miriam Feingold



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## INTERVIEW HISTORY

Edward J. Ennis was interviewed by the Earl Warren Project of the Regional Oral History Office in order to record his reminiscences of two events in which his path crossed Earl Warren's: The Japanese-American relocation, and the Ernest Ramsay deportation case which arose out of the King, Ramsay, Conner case.

Interviewer: Miriam Feingold.

Conduct of the Interview:

A single, two-hour-long interview was held on December 20, 1972, in Mr. Ennis' compact law office at 8 West Fortieth Street, New York City, where he now practices estates, litigation, and immigration law, in addition to serving as chairman of the board of directors of the American Civil Liberties Union. A spry man of boundless energy, Mr. Ennis reminisced easily and rapidly about events of thirty years ago. An outline prepared by the interviewer had been submitted to Mr. Ennis in advance, and this served to structure the interview, which was sandwiched into his busy schedule.

Concerned that the entire story of the Japanese-American relocation be told, Mr. Ennis suggested that the interviewer also speak to Col. Karl Bendetsen, assistant to General DeWitt of the Western Defense Command. Col. Bendetsen's office at Champion Paper Company was only a few blocks away. To facilitate matters, Mr. Ennis, at the end of the interview, wrote a note to Col. Bendetsen, which is included as an appendix to this manuscript. Following up the note, the interviewer telephoned Col. Bendetsen's office and was informed that it has been the colonel's policy for many years not to discuss the Japanese-American relocation at all. He referred all interested persons to the written army records.

Editing:

Editing of the transcribed, taped interview was done by the interviewer. Minor rearrangements of materials were made to maintain continuity of the discussion without interrupting its informal quality. Mr. Ennis carefully reviewed the edited text and returned it, he noted, "with its pristine informality unmarred."



Narrative Account  
of the Inter-  
view:

Mr. Ennis relates that as general counsel for the Immigration and Naturalization Service in 1941, and special assistant to the U.S. attorney general in charge of war problems, he had been working on the problem of how to deal with enemy aliens if and when war broke out, and that it was natural that when Pearl Harbor was bombed on December 7 that Attorney General Biddle appoint him chief of the Justice Department's Alien Enemy Control Unit. In this capacity, he relates, he tried to "cool the situation" while at the same time providing necessary wartime security.

Describing Gen. DeWitt's initial concern that the Japanese would next attack the West Coast, Mr. Ennis notes that in December and January DeWitt still asked only that the Justice Department's program be stepped up. He ascribes DeWitt's "about face" to pressure from "principally the farmer-growers, who had an avaricious eye on Japanese farming land, and from congressmen from California, who felt the pressure from these elements." The decision, Mr. Ennis believes, "was more political than military." Mr. Ennis relates that he testified at hearings in early 1942 against the proposal to evacuate Japanese of American ancestry. The decision itself, he explains, was made by the President, with the concurrence of the War Department, as well as the Western Defense Command and the Pentagon. He believes that it represented "a failure of the highest civilian officers in the military establishment." He also comments on the roles played by Attorney General Biddle, Tom Clark, a special assistant attorney general, and FBI head J. Edgar Hoover.

Mr. Ennis takes issue with Earl Warren's testimony to the Tolan Committee on the danger of Japanese sabotage, noting that the Japanese held land long before it was considered for "airports or anything else." He relates that there was no evidence of any sabotage, and although there was espionage, it was not enough to warrant an evacuation.

After leaving the Justice Department, Mr. Ennis became the attorney for the Japanese-American





Claims Act. He notes that he encouraged Japanese attorneys to handle the actual cases. Another important element in the rehabilitation of the Japanese-Americans was the bravery of the 442nd Battalion, the formation of which, Mr. Ennis notes ironically, he originally opposed.

Switching gears, Mr. Ennis next discusses his representation of Ernest Ramsay, a Canadian, in deportation proceedings arising from Ramsay's conviction in 1937 of second degree murder in one of then-Alameda County District Attorney Earl Warren's most controversial cases.

Mr. Ennis explains that in view of the immigration statute, only a pardon from the governor of California could prevent deportation, but the governor at that time, in 1953, was Earl Warren. Although Ramsay could bring considerable union pressure to bear on the governor, Mr. Ennis relates, the governor made clear his difficulties in pardoning a man he had helped convict. The problem was concluded when Governor Warren signed the pardon as one of his last official acts before leaving for the Supreme Court.

Mr. Ennis untangles the intricacies of immigration law, and describes how he first entered the case. He notes that he had played a role in the Justice Department's attempts to deport Harry Bridges, against his personal wishes. Once the pardon was obtained, Mr. Ennis comments in concluding the interview, Ramsay's naturalization was simply a matter of routine.

Miriam Feingold  
Interviewer

1 May 1973  
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U. S. Department of Justice  
5923 Washington, D. C.

THIS IS TO CERTIFY

that Edward J. Ennis

whose signature and photograph appear hereon, is a regu-  
larly appointed Administrator, Foreign Travel Control

of the and Director, Alien Enemy Control

United States Department of Justice, and as such is authorized to exercise the  
powers and perform the duties of that office.



*Edward J. Ennis*  
*James R. ...*  
The Assistant to the Attorney General

GPO 470596

*Francis Biddle*  
Attorney General.



Date of Interview: December 20, 1972

## I PERSONAL HISTORY

MF: I would like to start by asking a little bit of background on yourself.

Ennis: Certainly.

MF: Where you were born?

Ennis: I was born in Newark, New Jersey, on December 4, 1907. I have just reached that American retirement age of sixty-five, but I am not planning to retire immediately.

MF: Did you grow up in Newark?

Ennis: I grew up in Newark and I beat the white exodus from Newark by some thirty years. We moved to South Orange, New Jersey, when I was in high school. I lived in South Orange, where my family lives, until I went to Columbia Law School in 1929, and I have lived in Manhattan, New York City, since that time.

Immediately after leaving law school I went with the United States Department of Justice.



## II JAPANESE-AMERICAN RELOCATION

### The Justice Department's Alien Enemy Control Program

MF: When did you leave law school?

Ennis: In 1932. I went with the United States Department of Justice, where I held various positions until 1946, including assistant U. S. attorney in charge of civil division in New York, attorney in the solicitor general's office in Washington, arguing U. S. Supreme Court cases for the government, general counsel for the Immigration and Naturalization Service.

During the war, beginning on the night of December 7, 1941, I was director of the Alien Enemy Control Unit of the [Justice] Department, charged with detention of alien enemies believed to be potentially dangerous, some five thousand Japanese, five thousand Germans and a scattering of Italians, Hungarians, Rumanians, etc. I was also, concurrently, special assistant to the attorney general in charge of war problems generally, including martial law in Hawaii and various other problems, the evacuation of the Japanese from the West Coast, all that kind of thing.

MF: Now, before December 7, had there already been a list of dangerous alien enemies?

Ennis: Yes. Before December 7, the Department of Justice had a special unit with which I, as general counsel to the Immigration Service, was not involved. Together with the FBI it had prepared lists of persons of German and Japanese nationality, particularly German.





Ennis: The war had already been on since 1939, and because of their [the aliens'] connections with their home government -- with the Japanese, the Order of the Chrysanthemum, or Germans who had been German army officers or active in the Bund -- they were believed to be persons who should be examined for detention or parole in case the United States became at war with their countries. Beginning on December 7, within twenty-four or forty-eight hours, several thousand persons were apprehended by the Federal Bureau of Investigation.

MF: How did they come to appoint you the head of the Alien Enemy Control Unit?

Ennis: Well, as general counsel of the Immigration and Naturalization Service I was working with Attorney General Biddle on planning detention quarters for alien enemies, if the deteriorating situation with Germany and Japan resulted in war.

In fact, I was in my office on Sunday, December 7, 1941, when Pearl Harbor was bombed, working on some of these plans. I called the attorney general, who was giving a speech in Pittsburgh, the solicitor general, who was giving a speech in Philadelphia, and got all of the officials to come into the [Justice] Department that night, where I drafted the orders for the attorney general bringing the alien enemies thing into effect. Since I had been working on it, I was placed in charge of it.

MF: Shortly after that, there were two presidential proclamations, weren't there, December 7 and 8?

Ennis: Yes. I drafted those, as a matter of fact, that Sunday afternoon, getting the whole thing under way.

The alien enemy control program was a system under which aliens of any nationality with something in their record showing an allegiance to the enemy, would be apprehended and put through a hearing procedure. We appointed hearing officers, civilians, throughout the entire country. Every alien who was arrested got a hearing to determine whether he would be released unconditionally, paroled subject to reporting, or interned for the duration.



Ennis: Attorney General Biddle and myself felt that it was part of our job to cool the situation. We felt that aliens of known allegiance to their own country should be interned, but many of these people, in a country like ours, had lived in the United States all their lives.

This was particularly true of the Japanese, who were prohibited from becoming citizens of the United States solely because of their race. In fact, it may be that racist bar in the naturalization laws which was part of the reason that the Japanese and Japanese-Americans were so roughly treated. They had been prohibited from becoming citizens and being politically assimilated even though I think that most of them were emotionally and socially assimilated to the United States.

MF: In these hearings what sort of evidence could be used?

Ennis: The evidence which was used in these alien enemy hearings were really the reports of the Federal Bureau of Investigation upon the enemy associations of a particular alien enemy.

Now for example, I at that time being a young man, if I had been caught by the war in Berlin, I would have expected to be interned, simply because I would think that the German government had every reason to believe that I would do everything I could to help my own country. Therefore, I should be put out of circulation, as decently as possible.

In other countries where you won't find a large enemy population living, practically everybody gets interned, because they are usually there temporarily. In our country, you have to be more discriminating because most persons of enemy nationality are actually permanent residents of the United States.

But the kind of evidence -- take, for example, German army officers, like a man who later after the war became a friend of mine, Fritz von Opel of the Opel Motor people. We kept him interned all during the war, and his wife, too, as a matter of fact. He was an officer in the First World War -- not an officer, but in the German army in the First World War -- and he had made some remarks indicating that he thought the





Ennis: German army was going to win the war in Europe. I guess his wife volunteered to go into internment with him.

We did arrange that in any case where an alien was interned, his family could join him in so-called family camps. I happened to know Mr. Opel very well after the war, and I think we may have made a mistake, that his sentiments, in spite of the fact that he was a visitor here, were not with the German Nazis. But it is very difficult to determine those things in time of war.

MF: We interviewed James Rowe in Washington and he gave you a lot of credit for making sure that the alien enemies that were picked up were released as soon as possible if they could be, and that the investigations were as fair as possible.

Ennis: Well, by temperament, Rowe, who was the first assistant attorney general, and myself and Biddle felt that we should avoid, to the extent that public opinion, which is exercised in times of war, would permit us, some of the excesses of the First World War, when sauerkraut was called "liberty cabbage" and many people were pushed around.

In fact, I got into something of an argument with the FBI and Mr. Hoover at the beginning of our internment program, because the Bureau, which was never adverse to publicity, was arresting people and giving their names to the press. It resulted that the children of Germans or Japanese aliens who were arrested, when they would go to school on Monday morning, they would be confronted with the fact that their fellow students had the information from the press that their parents had been arrested.

It was our view that since most Japanese and Germans -- Italians were no big problem; the Italians in this country were not very gung-ho about the war that their country was fighting -- it was our view that really a minimum program was required. I went to bat with Hoover on this business of publicizing the names of alien enemies and Biddle held me up on it. We forbid Hoover and the FBI to publish the names of those people who were arrested for internment proceedings, in order to save their families from the embarrassment of the publicity.





Ennis: This is illustrative of the way that the Department of Justice tried to administer the alien enemy control program as a program which sought what wartime security was necessary without becoming 100 percent patriots at the expense of the alien enemy population, which on the whole was on America's side.

MF: I remember that Rowe mentioned that you were at loggerheads with Hoover. Was that what it was about?

Ennis: Well, that was one of the items. There were several things.

I went down to Cuba, and dealt with our ambassador and the foreign minister of Cuba to arrange a program for Cuba to intern the Nazis that we would identify whom we thought were fueling the German submarines in Cuban ports. Hoover complained to the attorney general that I made these arrangements with Ambassador Spraydon and the foreign minister of Cuba without consulting the Police Chief of Cuba, who was an official friend of Hoover's. My answer to the attorney general was that Hoover was not conducting our foreign relations or our arrangements outside the country.

Hoover was a very, very efficient bureaucrat who was very jealous of his jurisdiction and he complained if it was encroached on at all. Often there were arguments as to just where his authority ended and the authority of other officials in the Department of Justice began.

MF: I guess that was a problem that stayed with him.

Ennis: Yes, I think so. Sure.

MF: Grodzins\* says that in these early days the Department of the Navy was given joint jurisdiction with Justice over the Japanese in the continental United States. I wondered if you had any problems with this?

Ennis: No. The office of naval intelligence as well as military intelligence worked with the Department of Justice and supplied us with information that they might have, because they prided themselves on being experts,

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\*Morton Grodzins, Americans Betrayed, University of Chicago Press, 1949.



Ennis: particularly on the Japanese.

We utilized their information but the navy had no authority to arrest anybody or to deal with any civilian. All the navy could do would be to designate naval depots on the West Coast, from which they could exclude alien enemies if they pleased. They would have no general jurisdiction in the country.

MF: Would that be like Terminal Island and --

Ennis: Terminal Island to the extent that it was a naval base. They could post marines or naval police and check who went into an area that was a naval area, like Pearl Harbor.

One of the big cases that I handled during the Second World War was a worker getting into a fight with a marine at the entrance to the naval base. They wanted to try him by martial law in a military court. That was taken all the way up to the Supreme Court. I represented the government and we lost the case. I think we properly lost the case, claiming military jurisdiction over a civilian conflict.

#### Lieutenant-General DeWitt and the Move Toward Mass Evacuation

MF: Now in mid-December, according to Grodzins\*, DeWitt began to get dissatisfied with what the Department of Justice was doing.

Ennis: Well, I went out and talked to Lieutenant General DeWitt, and it was my impression that he was honestly, though mistakenly as it turned out, concerned that the Japanese fleet which had been so successful at Pearl Harbor might break lose a task force and attack the Panama Canal or even attack the West Coast of the United States.

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\*Americans Betrayed





Ennis: After we won the war and got ahold of the Japanese records, it appeared that this was not contemplated by the Japanese navy. But he honestly, though mistakenly, feared that.

He did not however, at that point in December, contemplate anything as large as removal of civilian population from the West Coast. He wanted the civilian authorities, the Department of Justice, to intern more Japanese aliens than we were interning.

I think that DeWitt's about face, and his reach for a larger power, only came about when he learned from elements in California, principally the farmer-growers, who had an avaricious eye on Japanese farming land, and from the congressmen from California, who felt the pressure from these elements -- DeWitt realized that he could ask for authority to do a great deal more than the Department of Justice was willing to do, and he was right.

He asked for such authority, and the Department of Justice opposed it. The President then determined that if the civilian authorities would not deal with American citizens of Japanese ancestry as something beyond our authority, that he would authorize the military authorities to do it as a war measure. The Congress backed that up by passing a law saying that it was a crime for any person barred from a military area to remain in that area or to attempt to enter it.

I testified for the attorney general against that legislation and before the entire West Coast delegation of congressmen and senators, and said that the Department of Justice would have nothing to do with evacuating American citizens from the West Coast because we thought it was wrong. They said that if we didn't do it, the military authorities would do it. I said, "Well, that is their responsibility." And that is what happened.

MF: Now when was this that you were testifying?

Ennis: Probably in late December or early January.

MF: So they were already contemplating, then, removal of citizens?





Ennis: Oh, yes. What happened is -- what I believe happened is that the determination was more political than military.

When I first saw DeWitt early in December, I don't think it ever occurred to him that he would be allowed to give a military order that would say that all the states of California and Oregon and Washington, were barred to American citizens of Japanese ancestry as well as aliens. He only realized that such military power would be approved when the white farmers in California got to their congressmen and the congressmen made it clear to DeWitt that if he asked for such power that it would be approved. I think it took at least a month after December 7, 1941, for that kind of sentiment to develop.

That is one man's opinion about this whole evacuation, which it is now generally agreed, was not required by security and was a foolish misuse of manpower, because the Japanese instead of growing food were living idle in camps having to be fed by others.

MF: Several of the people we have talked to have said that one of DeWitt's weaknesses was that he tended to listen to the last person who talked to him. I wondered if that was your impression?

Ennis: I only met with the General two or three times. I would not have any opinion on that question.

He had a very able assistant in Colonel Bendetsen, Karl Bendetsen, who handled this whole military control of the civilian population for General DeWitt. You might get his views on the matter. He is now, I believe, president or chairman of the board of the Champion Paper Company here in New York City.

MF: I think it was Rowe who felt that actually Bendetsen was the real power behind that decision.

Ennis: Well, I think Karl Bendetsen was the administrator of the decision, but the decision, which was made by the President of the United States, with the concurrence of Secretary of War Stimson, Undersecretary of War Robert P. Patterson, and Assistant Secretary of War John J. McCloy, involved the highest civilian military authorities, as well as General DeWitt and his military superiors at the Pentagon.



Ennis: Colonel Bendetsen may have recommended it, and when it was approved did run the show of the military evacuation, but I hardly think one could place the responsibility for the decision upon him.

I believe personally that it was a failure of the highest civilian officers in the military establishment. I think that Secretary Stimson, who was a very eminent and experienced lawyer -- and as was Robert Patterson who had been a United States District Judge, and John McCloy who was a very eminent attorney -- I think they decided to give the military anything that they requested, at a time when our forces had been defeated and the road ahead looked rather dark and bleak. If the highest military authorities advocated to the President, who was the commander-in-chief, that such action be taken, it overrode the views of the Attorney General of the United States.

#### The Justice Department and the Courts

MF: It's the military-necessity argument. Rowe says that the phrase, "military necessity," still gives him nightmares. He still climbs the wall when he hears it.

Ennis: Well, it succeeded in the Supreme Court of the United States. The nature of government is such that although the attorney general and I and Rowe opposed it, it was put into effect.

When it was put into effect by the military authorities, and the Japanese were driven out of California, we did not undertake to give them shelter or provide camps for them because we were pretty busy with our alien-enemy camps. This was taken on by the Department of Interior, which was then run by two admitted liberals, Harold Ickes, and Undersecretary of Interior Abe Fortas, later justice of the Supreme Court. They provided the camps in Idaho and Arizona and Texas and elsewhere in which the hundred thousand Americans of Japanese ancestry were housed during the war.

But to get back to the Justice Department, when the program was challenged in the courts, I represented the War Department, and impressed upon the courts this argument of military necessity, because the Department of Justice as the attorneys in court for other branches of the government, defended the action which, as a matter of policy, we opposed. We defended its





Ennis: constitutionality on the theory that the military in time of war apparently has the constitutional authority to make mistakes. We won the first cases.

I thought martial law was entirely wrong in Hawaii after the first year. I went out and defended General Richardson and Admiral Nimitz, and took those cases up to the U. S. Supreme Court and argued them, and lost them, I am glad to say. I thought they were wrong at the time. I made no secret of my views and despite that the military had enough confidence in me that I would give all the arguments that were on the government's side.

MF: That was a curious position for you to be in, to have to suddenly argue --

Ennis: Yes, I told them I would prefer not to, and they said, "Well, you know about these cases. You tried them in Hawaii; you should argue them." I said, "I will argue them," but it was understood that I believed that we were wrong in these cases. "Yes, you go right ahead."

I did, and as I expected the Supreme Court in an opinion by Justice Black held that martial law in Hawaii was unconstitutional. I think Mr. Justice Frankfurter dissented without opinion, one of the few cases in which he dissented without expressing his views. I don't recall whether anybody else dissented in that case.

MF: Were you also involved in the Korematsu and Endo cases?

Ennis: Yes. My office prepared the briefs for the government in Korematsu, Yasui and Endo, which, as I say, is a curious commentary on the responsibility of the Department of Justice, in defending policies which it, in fact, opposed.

### The Role of Tom Clark

MF: If we could back up a bit to January, 1942, at that point Attorney General Biddle sent Tom Clark to California -- actually I guess Tom Clark was already in California -- and I wondered what you thought then and now of that.





Ennis: I thought then what I told Biddle at the time. In view of the difference in time of three hours between Washington and California -- I was working from about eight in the morning until about midnight and flying back and forth several times to California trying to stop this growing desire to evacuate the Japanese-Americans from the West Coast. Biddle appointed Clark, who was then assistant attorney general in charge of the anti-trust division, on the curious ground that since the anti-trust division had an office in Los Angeles, and I think one in San Francisco, it would be convenient. Biddle told me that he appointed Tom, whom I knew well personally. Tom was a very standard, traditional Texan. You must remember that a lot of Texas soldiers were caught by the Japanese in that mess in the Philippines, remember the retreat from -- what was the name of it?

MF: Corregidor?

Ennis: Corregidor. A lot of Texas troops. The feeling in Texas was very high. Assistant Attorney General Clark shared that feeling, I said to Biddle, I said, "Francis, haven't we got enough trouble in trying to stop this swelling movement on the West Coast without appointing a Texan who is going to go right to DeWitt and say that as far as he is concerned, he thinks it is a great idea to kick all these Japanese-Americans out of California?" And Clark was not helpful in stemming that movement.

MF: He wasn't?

Ennis: He was not.

MF: What did he do that wasn't helpful?

Ennis: Well, he did not support the policy that Biddle and I, that I was trying to execute, of using whatever power the Department of Justice had to oppose the evacuation as both unnecessary and unconstitutional.

I must say I never got the attorney general to quite agree with me, but he was not prepared to tell the President of the United States that it was unconstitutional. I took a more political view. I said, "As attorney general, please say it is unconstitutional as well as unnecessary, because they may listen to your views on constitutionality more than they will on necessity. The President may turn to the military on what is necessary and to you on what is unconstitutional, so please say it is



Ennis: unconstitutional. What is constitutional or not is a matter of opinion, and I would like you to come down on the side that it is unconstitutional."

He was almost a saint-like fair man and he would not do that. He just gave the argument that there was no reason to believe that the Japanese-Americans were disloyal, and that they should not be removed, but he was not prepared to say that the government did not have the military power to do it. He turned out to be right in the sense that the Supreme Court upheld the constitutionality of this military action.

I like to think that if I had been attorney general I would have screamed that it was unconstitutional and try to persuade the President to follow me on that ground as well as on the ground of lack of military necessity.

#### The Role of President Roosevelt

MF: Speaking of the President, how much influence do you think he had in the decision?

Ennis: Well, it was his decision. What happened was we went to the White House, you know, Stimson and Biddle and Rowe and McCloy, and presented this problem to the President, that the military wanted to move out the Americans of Japanese ancestry. The Department of Justice said it was unnecessary and a wrong thing to do. The military said that in the situation of lack of any defenses on the West Coast with the destruction of the navy, that it should be done. The President, who was still suffering very much from the destruction of his navy -- remember he had been assistant secretary of the navy in World War I -- made the decision, as President and commander-in-chief. He made the decision; it was his responsibility.

The decision, of course, was his. High officials of the Department of Justice and of the army presented their different views to the President. He gave authority to the military to make military zones, and very large ones, all the western states, from which they could exclude anyone that they believed was required





Ennis: in the interest of military security, knowing, of course, that all of the Americans of Japanese ancestry would be ordered excluded.

MF: Grodzins\* gives the impression that Roosevelt's attentions were taken up with the war in general and that he pretty much listened to what people told him and that in a sense the decision had already been made; he just okayed it.

Ennis: Well, it was made only in the sense that the unanimous advice of people like Stimson, Patterson, McCloy, and the chiefs of staff, who supported General DeWitt's request for this authority, would be likely to be very effective at the beginning of a war which the President was very concerned about. We were certainly not winning it at that point -- we were losing it -- and this advice would be very effective with him, you see.

He signed the executive order which they had submitted. I think Grodzins\* is right in the sense that this was a relatively small matter, probably, in the President's mind, as commander-in-chief, in relation to the whole conduct of the war, and the battles that were coming up in the Pacific beyond Hawaii.

MF: I'd like to back up again a minute. There is a rather important meeting that took place on the night of February 17 that was held, I think, in Biddle's home. You were there and Rowe and Biddle and Clark and Bendetsen, Gullion, and McCloy. Gullion pulled out of his pocket a draft of an executive order that would have allowed evacuation of citizens as well as aliens. There is a description of the meeting that is very dramatic, given in Grodzins.\* I think he quotes Rowe, in which Rowe said he was so furious he couldn't speak and that you almost wept.

Ennis: Well, I recall now -- in view of the fact that thirty years have passed -- I recall the account of that in Grodzin's\* book better than I do the incident, at the moment. I certainly did not at the time I read it in Grodzins\* find anything wrong with it, nor do I now.

I know that we felt it a matter of great moment,

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\*Americans Betrayed





Ennis: and I certainly will not deny that I was profoundly disturbed at the idea that all Americans of Japanese ancestry were to be evacuated from their homes. Yes, I think that that is a correct account.

### The Question of Sabotage and Espionage

MF: Now when was the Tolan Committee appointed, because didn't that actually come about after the executive order?

Ennis: I would not have an independent recollection of that. I remember its activities, but I cannot at this stage, without referring to the records, recall the exact chronological events.

MF: Warren testified before the Tolan Committee. That's when he produced all those maps that purported to show that it was more than just coincidence that the Japanese were surrounding all the railway lines and the dams and the hydraulic equipment.

Ennis: Well, I believe, as I did then, that the title records in California will show that the Japanese occupied these areas long before they were considered by the government for airports or anything else. Attorney General Warren had the cart before the horse when he suggested that the proximity of the Japanese to these areas had any security intent or implication. His argument should have been more limited, that even though they had gotten there innocently, since an airport had been planted in their midst, that created some kind of a security risk.

Theoretically that is true. We know with the benefit of hindsight that it did not [create a security risk], but what you must remember is that at that time the air was full of phony stories that Japanese trucks on our airfields in Hawaii, at the time of the attack on Hawaii, had run amok on the airfields destroying our airplanes. All false.

There was no evidence of any sabotage by the Japanese-American population, or Japanese alien population for that matter, either on the mainland or in Hawaii. There was espionage, there was certainly communication



Ennis: between Japanese agents in Hawaii and the Japanese forces, but there was no sabotage, nothing which would warrant an evacuation.

It is curious that with a relatively much larger population of Japanese and Japanese-Americans in Hawaii, it was never any serious thought of evacuating Hawaii, for the practical reason that they didn't have the transport. The reasons basically were practical.

It was possible to evacuate the Japanese-Americans from the West Coast, and there was a great political advantage in it. It turned over their lands to their white neighbors. It was not possible to do this in Hawaii because there was no place to evacuate them to, and we didn't have the means to evacuate them. These decisions were basically practical-political decisions, rather than decision of serious military necessity.

MF: There was a lot of talk then -- speaking about espionage and sabotage -- of ship-to-shore and shore-to-ship communications. I wondered if you remembered that?

Ennis: Yes. I don't think that any of that was substantiated. There were stories like, we had stories of signalling to Japanese submarines on the West Coast and all turned out to be nonsense. It was the kind of nonsense that the Department of Justice would not act on. I believe that the military acted on theories such as that the Japanese navy might land a force in Mexico and they might come up through Southern California and DeWitt's soldiers wouldn't be able to tell the difference, because of the physical appearance, between Japanese invaders and local Japanese. Local Japanese might help the invaders. I believe there was nothing to support that kind of military speculation.

#### The Position of the War Department on Mass Evacuation

MF: You talked a little bit before about Stimson, Patterson, and McCloy. What did you feel that their general attitude was toward evacuation?

Ennis: Well, I didn't know Stimson, but I knew McCloy pretty





Ennis: well and Patterson, who had been judge in the southern district of New York when I was assistant U. S. attorney. They were three men whom I admired very much.

I think that they conceived their role as obtaining for the military, the uniformed military authorities, whatever they thought they needed to fight the war. I think that Stimson and McCloy and Patterson acted as attorneys for their clients, the military, and got them what they asked for. They did a very good job and did not do the job that constitutionally the civilian military authorities are supposed to do, namely to examine what the uniformed military authorities ask for and determine independently whether it should be given to them.

But it is impossible in 1972 to reconstruct for you the spirit that prevailed in January and February of '42. The outstanding fact was that we had lost a great battle in Hawaii. We had no defenses on the West Coast at all, and the military was saying to their superiors in Washington, we don't have the means of defending the West Coast if there is any attack and therefore you must clear the battlefield of any potential aides to the enemy in case there is an attack.

In fact, that great pundit for the then New York Herald Tribune -- I am trying to think of his name, Walter Lippmann -- put in a column in the height of the argument in the press as to whether we should evacuate Americans of Japanese ancestry from the West Coast, he put in one of his columns, who claims the right to remain on a battlefield. This, of course, I think, put the matter entirely wrongly, because there was no right to remove these people from their homes and destroy their lifelong earnings and property they had acquired on the theory that California might become a battlefield, which was the theory that DeWitt sold to his superiors in the War Department and they sold to the President.

But I don't like to beat this dead horse, because after the event everybody pretty much agreed that it was an unnecessary military act and perhaps the greatest violation of civil liberties in the United States. There is nothing more I can say about it.

MF: What kind of role did Alan Gullion play, Provost Marshal General?





Ennis: I don't think General Gullion was very influential in the matter. I remember one of the first things he suggested to me when the war started was that we should have a census of all persons living in the United States. We had had in 1940, you see, the Alien Registration Act, requiring all aliens in the United States to register. Apparently taking that as his model, he said, "Now we ought to have a registration of all."

I just said, "General, really, you know, you people have a war to fight and this idea of diverting man-hours -- we all have a war to fight, civilians and military -- diverting man-hours to take the census, requiring all people in the United States to register," I said, "I just think it is a lot of nonsense." This idea didn't take hold.

I never felt that Gullion was very important even with his superiors. That is my own personal opinion. I think they were impressed by the military commanders such as DeWitt who said, "If I am put in charge of this area to defend it, here's what I want. I want the powers to clear the area of anyone whom I think might be disloyal, and that includes, now that I have heard from the congressmen and they have heard from the farmers out there, the farmer-growers associations, that includes all persons of Japanese ancestry." I think that was the line from DeWitt to McCloy and Patterson and Stimson, rather than through the Provost Marshal General. I don't think he was important.

### The Military Assumes Control

MF: One of the things that I think Rowe mentioned, or it might even have been Biddle, was that one of the problems that they felt was that there was a great deal of deference then by the Justice Department people to the military people. Was that your impression?

Ennis: No. I don't think there was any deference at all. I didn't feel any deference, and I don't think Rowe or Biddle did, but what happened was that the P resident overruled Biddle and accepted the advice of Stimson and company.

MF: Speaking of Biddle, at that February 17 meeting that



MF: Grodzins\* describes, Biddle said evidently very, very little and offered no argument at all against the proposed executive order that Gullion presented. I have probably asked this before in other ways, but I wondered why you think Biddle changed his mind.

Ennis: No. I don't think Biddle changed his mind. Biddle was in touch with the President every day. By that time he may have already ascertained that the President was going to approve such military action, and the fact that he may not have expressed himself at that particular meeting wouldn't be meaningful.

His position was against the evacuation. He had told the President that. If the President indicated to him that he was going to accept the views of his military authorities, and Biddle knew that, he [Biddle] might have felt that it was past the point where he could do anything. There was not much use of Biddle, as the attorney general and member of the cabinet, arguing with Gullion or Bendetsen, because it was perfectly clear what they wanted. They wanted the maximum military power. The only place that it was worth Biddle talking was to the President. He did that, and he was overruled in favor of the military request.

MF: Grodzins\* quotes Rowe as saying that the worst mistake the Justice Department made was believing the army would not accept the administrative job. In other words, Grodzins feels that the Justice Department felt free to oppose the necessity of evacuation feeling that no other department would take on the administration of such a thing.

Ennis: Well, I don't recall that that was Jim Rowe's estimate of the situation. If it was, it was obviously wrong.

I don't know whether I can separate hindsight from how I felt at the time, but I must say it looked to me as if the army was itching to do something. They couldn't fight the Japanese in California, so they

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\*Americans Betrayed





Ennis: found someone else to fight, and that was the Americans of Japanese ancestry.

I don't recall why Jim [Rowe] felt that the army would not be willing to take on this responsibility. At the beginning of the war there was some talk that the Department of Justice might take care of military prisoners of war, as well as civilians. But it was finally concluded that prisoners of war transported from either the eastern or the European theater of operation would be handled by the army. They handled them; they built the camps, detained them, and we did not get into that as it was one time thought that we, the civilian department of the government, might.

The army has never had any difficulty, especially in time of war, when they have almost unlimited command of both personnel and funds, to take on all kinds of jobs. They certainly took on the evacuation of the Japanese with gusto and even guarded the temporary camps in which the Japanese were held in the course of evacuation. But they were not required to guard the War Relocation Authority camps, although they may have supplied some guards.

### Post-War Reparations

JF: Were you involved at all in any post-war reparation efforts?

Ennis: Well, after I left the Department of Justice, I became attorney for the Japanese-American Citizens League for a couple of years. I helped them draft the legislation that became the Japanese Americans Claims Act. I toured the country for them explaining the act, and explaining to people how to make their claim to recover their farms. But I tried to arrange that mostly Japanese-American lawyers, who had lost all their practice during the war, be their attorneys. I did not participate in those cases to any extent. Mostly Japanese-American attorneys represented them and helped them recover their money.

I don't at the moment recall whether the American Civil Liberties Union, of which I have been a





Ennis: director since 1946 and general counsel from 1950 up until two years ago when I became chairman of the board of directors, was interested in the Evacuation Claims Act or not. They may have been, but the recovery of monetary damages would not be of as great an interest to them, the American Civil Liberties Union, as the vindication of their civil liberties and the rights to liberty.

### The 442nd Battalion

Ennis: The only thing I would like to add is that in the Department of Justice, when the army suggested that the young Americans of Japanese ancestry form a special battalion right out of the camps, become a special combat unit, I personally rather opposed it on the theory that if people's loyalty were questioned, they certainly had no obligation to join a special combat unit and increase their chance of getting killed for the country.

Assistant Secretary of War McCloy encouraged them to do that. They did it, and it became, at great cost in blood and life, perhaps the greatest single thing that contributed to the rehabilitation of the Japanese-Americans and to their acceptance back on the West Coast after the war. I think that I was wrong about that, about being cool about that thing, and probably Mr. McCloy was right in encouraging them to do this and to go into this special 442nd battalion which had a great record for bravery in the European theater, and great losses.

They bought with their blood and lives an acceptance. They proved their loyalty, in other words, in the hardest way possible. Even though it was a great cost for the group as a whole, it was probably a wise thing to do, though I believe they were not obliged to give any special indication of their loyalty to the country.

### The Cohen, Cox, Rauh Memorandum

MF: Do you remember in mid-February [1942] or so, there was an opinion submitted to the Justice Department by three private attorneys, Benjamin Cohen, Oscar Cox and Joseph Rauh, in which they discussed the constitutional ways of dealing with the Japanese? It is mentioned in



MF: Grodzins,\* but it doesn't appear in any of the other books on the subject, as far as I know. I wondered why these private attorneys submitted this memorandum. Had it been solicited?

Ennis: I do remember it and I have generally such affection for the attorneys involved, that I had not given the matter any publicity, but since you asked me I will answer you.

Mr. Biddle had my view that the evacuation should be opposed as unconstitutional. I had frankly told him that even if he had any doubts about unconstitutionality, since, in a sense, that was a political question, he should come down very hard on the side of unconstitutionality.

Since he knew my views were in part political, he requested the views of these eminent constitutional lawyers. He got from them, to my great disappointment, a what I would call theoretical, neutral view that a government could do almost anything in wartime that it believed necessary for its preservation. I was very disappointed in this opinion, and it may very well have influenced Mr. Biddle in not opposing the evacuation more rigorously than he did.

MF: Do you think that they submitted that opinion because as good lawyers they were just answering a request, or was that their feeling, do you think?

Ennis: Oh, I am sure that was their judgment as lawyers, but they were lawyers not involved in the administration of the program. I, as a lawyer involved in the problem, was certainly expressing a view on the constitutional problem which supported my view on the merits of the thing. They were not, in a sense, involved in that and they submitted, as I say, a view of lawyers uninvolved in the problem, who gave the view that in time of war a government may do pretty much as it pleases.

I consider that a kind of a literary constitutional view, which should not be advanced wholly apart from the social question involved. But naturally, as a person involved ever since then in the [American] Civil

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\*Americans Betrayed





Ennis: Liberties Union, I am not by temperament inclined to give views on the constitutionality apart from what the proposed government action does to people.

I was very disappointed in this memorandum by Mr. Cohen and Mr. Rauh -- and who was the third one? Cox. They are all very fine lawyers whom I knew well. Joe Rauh I just saw a week ago in connection with the election in the mine workers union where he was largely responsible for the legal actions which resulted in the Department of Labor supervising this independent election which brought in a new, and we believe a much better, administration of the mine workers. He is a great lawyer, Mr. Rauh as is Mr. Cohen and Mr. Cox. I am not sure if Mr. Cox is still alive, but they were great lawyers who rendered a very unhelpful opinion to my boss, the attorney general.

#### J. Edgar Hoover's Position on Mass Evacuation

MF: What was J. Edgar Hoover's attitude toward evacuation?

Ennis: Hoover, I am happy to say, since I am not often asked to speak of actions of the FBI which I approve, Hoover was entirely neutral in the matter. He did not intrude, he did not urge the evacuation. I understand that later it has been suggested that he opposed the evacuation. I doubt that, I don't recall it being so. It was not Mr. Hoover's style really to interfere and to speak against a security measure to be taken by another agency. My recollection is that he was neutral in the matter and certainly did not make my life more difficult in this respect in urging Biddle to oppose it. He considered it outside his bailiwick.

MF: Rowe mentions that he also was upset because the Japanese evacuation would have messed up intelligence. I did not quite understand what he meant by that.

Ennis: I can't recall what Mr. Rowe would have meant.

MF: He said, "Hoover opposed the evacuation because it broke up an intelligence pattern.\*"

---

\*See interview with James Rowe conducted by the Regional Oral History Office.





Ennis: I do not understand that. I don't recall that he opposed it. I do recall that he did not urge it and I am happy to put that on the record.

MF: I know it is very hard to find anything nice to say about Hoover! Did he have any recommendations, or suggestions or thoughts about what should be done with the Japanese?

Ennis: No. He gave us a great deal of information every day on security matters he got from the West Coast.

As far as the Department of Justice's own program of interning alien enemies, he was pretty strong for a larger program than we wanted. When we paroled people instead of keeping them in detention, or released them entirely, Hoover and his bureau protected themselves by memoranda indicating that they should be kept in detention, so that if we did let loose a saboteur it would fall on us and not on him.

This was a responsibility we were glad to take, because it was our responsibility. There was no sabotage by anybody we did release, or anybody else for that matter.

MF: Where were the enemy aliens interned?

Ennis: We had camps in various places. We had a large camp for Japanese in Texas; we had a large camp for Italians in Minnesota; and we had a family camp in Texas where wives and even children could join an interned father. We had a half a dozen camps throughout the country. I don't remember them all, but I do recall insisting that the attorney general accompany me and visit some of these camps so that he would see what we were doing to people, so that when we were doing the paper work in Washington we knew that in order to intern someone it meant living in acceptable, but you know, minimal circumstances.



### III THE ERNEST RAMSAY DEPORTATION CASE

MF: I know that we are going to be short on time so I want to switch gears entirely and talk about the Ernest Ramsay deportation case. I think I sent you some material, didn't I?

Ennis: Yes, you did, which recalled this case in which I represented this Canadian, Ernest Ramsay, who was being deported. Although married to a United States citizen, he had been convicted of a crime involving moral turpitude, namely, a ship murder on the West Coast. While Chief Justice Warren was district attorney, his office had prosecuted Ramsay. Ramsay, after being released after some years imprisonment, had become an official of one of the American unions, and they were trying to help him get a lawful permanent residence in this country.

I became his attorney and represented him at some of the hearings, but in view of the statute, it was not possible to get him a permanent residence. I had advised the union that the only way he would achieve a permanent residence, so he could remain in the United States with his American wife and children and not be deported to Canada, was to get a pardon from the governor of California. His union, which was influential in California -- it was a maritime union influential in San Francisco -- did approach Governor Warren.

As it was reported to me it was made clear to the union that it was rather difficult for the governor to pardon a person who had been convicted by his office when he was district attorney, in a case which had a tremendous notoriety on the West Coast. The pardon application was stalled, as it were, in the governor's office.





- Ennis: However, the conclusion of the whole matter was that on the Sunday afternoon before the Chief Justice left for Washington to be sworn in when court opened on Monday morning, one of the last official acts he did was to sign the pardon on behalf of Ramsay, who then succeeded in getting his status adjusted to permanent residence.
- MF: Now there were some things that I was confused about. The early deportation orders claim that within five years of his entry into the United States he had committed this crime of moral turpitude. The thing that confuses me is that he had actually first entered the United States when he was six years old, which is long before five years had elapsed, but he had been, of course, in and out on ships. Did they count the time from the last time he had come in.
- Ennis: Yes. One of my jobs at the Department of Justice was general counsel of the Immigration and Naturalization Service. After the government, all my life, I have done a lot of immigration work, and I am familiar with these things. The theory of our immigration laws is that every entry is a new entry and the consequences are that every time you re-enter all of these provisions about being deportable for convictions after entry gets a new lease on life.
- He was convicted within five years of one entry, within five years of his last entry, despite the fact that he may have had many entries prior to that. That is a basic doctrine of immigration law, that every entry is a new entry for purposes of these provisions.
- MF: You had been doing a lot of immigration work then? I wondered how Mr. Ramsay found his way to you.
- Ennis: Well, his former lawyer had asked me to take on the case -- whether she was going out of practice at that time or she felt I could handle it better -- I don't recall what the reason was. Anyhow, I was asked to take on this case somewhere in the middle of it, and handle it until its conclusion. I thereafter represented him in obtaining his naturalization as a United States citizen. He became naturalized.
- MF: I have a xerox of a letter here from a George Seagrave





MF: Franklin to Governor Warren. I don't quite know if he was representing Ramsay then. This is in '48, from the firm of Bouvier and Beale.

Ennis: I do not recall that, but he may have been representing Ramsay and trying to get him a pardon. The lawyer who represented him in his immigration case was a woman whose first name was Carol, an attorney I knew very well, and I just can't think of her last name, Carol King. Carol King was Ramsay's attorney. Carol asked me to take it over whenever I did, which probably was around 1950.

MF: Carol King worked quite a bit with the law firm of Gladstein and Grossman on the West Coast.

Ennis: Oh yes, very closely.

MF: They had worked together on the Harry Bridges deportation hearing.

Ennis: Well, I was general counsel and handled the government's case to deport Harry Bridges. Carol was the opposing counsel, and we got to be quite friendly.

Indeed, after the Board of Immigration Appeals ruled that Bridges should not be deported, I recommended to the attorney general that we not pursue the case any further but let it drop. He, however, took it to the Supreme Court of the United States and relieved me of the responsibility for handling the case, because I told him that I thought the Board had properly decided against it. I did not handle it in the Supreme Court, where it was lost.

MF: Which of the deportation hearings was this? Was this 1939?

Ennis: Yes, it would have been in '39. Well, it had to be the proceeding before the Board of Immigration Appeals in 1940, because I was only general counsel from June, 1941 until December, 1941 when the war started. There must have been some part of the proceeding in the Board of Immigration Appeals at that time. I represented the government and lost the case, and recommended that we go no further. But of course the government took it up to the Supreme Court and lost it.

Carol [King] was on the other side of that case. We became friendly, and I guess Ramsay had some



Ennis: radical connections, either the union was or he had some radical connections -- that's why probably he had Carol as his lawyer.

MF: Well, it makes a lot of sense because Richard Gladstein, George Andersen, and Herbert Resner represented Ramsay in the original trial in 1936, and they would have known Carol. I know the firm of Gladstein and Andersen represented Ramsay in some of the very early attempts to get his pardon, after he was released from prison.

Ennis: In fact, I am not sure of this, because we are talking about twenty years ago, but it is even likely or at least possible, that Ramsay's political sentiments changed, and that Carol became uninterested in continuing this difficult representation. She may have suggested that I take on Ramsay because she knew that I was really quite indifferent to the sentiments of aliens in deportation proceedings. I didn't care whether they were rightist or leftist or in the middle. She might very well have suggested that I take him on because his sentiments had changed from the time that she had begun to represent him.

MF: That is probably correct, because, in fact, one of the points the DA's office made in recommending Ramsay for a pardon, ultimately, was the fact that he was very active in ridding the unions here on the East Coast of Communist radicals.

Ennis: That is correct. As you tell me that, it comes back to me. I think Ramsay probably became anti-Communist in his seaman's union. Miss King wouldn't have liked that, and she may have turned him over to me as a way of dropping him as a client really.

MF: Is she still around?

Ennis: No, no. Carol has been dead for some years.

MF: One of the things that I gather from looking at some of these papers is that in 1948 the Board of Immigration Appeals withdrew the warrant of deportation against Ramsay in order to reopen the hearing to take further evidence on his good conduct. There are no documents from 1948 until 1953, when the Board decided against Ramsay and order him deported. Did it usually take that long? That's five years.

Ennis: No, that's rather long. It may have been that they





Ennis: were allowing a period for him to establish a good moral conduct, something of that kind. I don't recall, really. It is an unusually long time, but I don't recall any particular reason for it, unless, as I say, it was giving him an opportunity to acquire some years of good moral conduct.

MF: You mentioned in your letter to me the McCarran Act. When was that passed?

Ennis: That was the Immigration and Nationality Act of 1952, which was a general revision of the prior immigration laws of 1917 and '21 and '24. It had a specific provision in it that no person convicted of murder could be considered as having good moral character. This was a pet of General, of Senator McCarran himself. Also there is a provision in there that nobody convicted of adultery could be considered as having good moral character. The courts have eroded these provisions to some extent, where possible, by distinction, because our society today recognizes that even the crime of murder and certainly adultery may be in circumstances that doesn't forever damn the person as not being capable of acquiring good moral character.

MF: Under the McCarran Act, the only way he could have stayed in this country, then, would have been to get a pardon?

Ennis: Yes. A pardon was the only possibility, and the block to the pardon, despite his later conduct which would meet, I presume, the approval of the governor of California and his support by conservative seamen's unions, was the political problem of Warren pardoning a convict in a case of which his office was the prosecutor that had been a big, big political case. The thing was kind of stalled around in Warren's office and then he bit the bullet just before he left that office, probably the last day he was there.

MF: Yes, it was.

Ennis: It was reported in the papers on the Monday morning on which he was sworn in as Chief Justice of the United States. It was reported as one of the last things he had done, pardoning Ramsay as one of the defendants in the ship murder case, as it was called in California.

MF: Was there any problem, then, in getting Ramsay





MF:       naturalized?

Ennis:   No.   Then it was purely a question of reopening the case and having the deportation proceeding dismissed on the ground that he was no longer under a conviction for murder.  Then being naturalized was simply a question of him living here long enough as a lawful permanent resident -- three years if you are married to an American citizen -- and he was naturalized routinely after that.

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Herbert Wenig

THE CALIFORNIA ATTORNEY GENERAL'S OFFICE,  
THE JUDGE ADVOCATE GENERAL CORPS,  
AND JAPANESE-AMERICAN RELOCATION

An Interview Conducted by  
Miriam Feingold Stein



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## INTERVIEW HISTORY

Herbert Wenig was interviewed by the Earl Warren Project of the Regional Oral History Office in order to document his reminiscences of the Japanese-American relocation during World War II seen from the perspective of the California attorney general's office and the Judge Advocate General Corps.

Warren Olney III, an advisor to the Warren Project and who himself, as an interviewee, discussed the Japanese-American relocation, first suggested that we interview Herbert Wenig. Then an assistant attorney general, Mr. Wenig kindly consented to take time from his busy schedule for an interview. A single session was held on March 26, 1973 in Mr. Wenig's office in the State Building overlooking San Francisco's Civic Center.

At Mr. Wenig's request, the interviewer obtained for him the Army's Final Report on the relocation which he used to refresh his memory. An outline had been submitted to him before the interview which he referred to periodically during the taping session.

Interviewer:       Miriam Feingold Stein

Editing:           Minor editing of the transcribed interview was done by the interviewer. Mr. Wenig, who retired shortly after the interview was taped, but who still continues to maintain an active and vigorous life style, set time aside to review the manuscript carefully and to make several corrections and additions.

Narrative  
Account of the  
Interview:       Mr. Wenig opens the interview by briefly describing his education and law training. He notes that he first met Earl Warren during the 1938 attorney general's campaign, during which he was in charge of the speaker's bureau in San Francisco.

Shortly thereafter, Attorney General Warren hired Mr. Wenig in a special capacity to assist in the prosecution of gambling ships off the Southern California coast. From there, Mr. Wenig went on to join battle against Nationwide News Service and other bookmaking establishments. In both cases, Warren's office successfully abated the practices.



At this time, Mr. Wenig relates, war clouds were gathering, and he turned his attention to a little-studied question, the basis for declaring martial law, although the ultimate decision was not to utilize this measure. In view of the likelihood of war with Japan, Attorney General Warren and his staff were becoming increasingly concerned with the location of the Japanese population in California, and Mr. Wenig describes Warren's early efforts to enforce the alien land laws. Mr. Wenig himself was put to work on developing a theory of constitutionality of a mass evacuation order. He describes the arguments presented to the Tolan Committee in favor of evacuation, but notes that the key point was not so much that there might be within the Japanese population groups who were loyal to Japan, but that the authorities did not have the time or the ability to identify those who were disloyal.

In discussing the decision to evacuate the Japanese, Mr. Wenig recalls that, while General John L. DeWitt (commander of the Western Defense Command) welcomed Warren's vigorous support, Warren had little influence on DeWitt's decision. He describes Col. Karl Bendetsen as playing an active role in the decision making.

In early 1942 Mr. Wenig was summoned simultaneously by the Judge Advocate General Corps and the Coast Artillery Anti-aircraft Division of the army. Choosing the latter in the hopes of seeing field duty, he was instead soon transferred to the Judge Advocate General Corps and to the staff of General DeWitt. Here he continued the work begun earlier on Japanese-American relocation.

One of the litigations he handled was the Wilcox case involving an American civilian who had advocated violation of army curfew and general war regulations, had been forcibly removed from the military zone, and had, with the aid of the ACLU, sued the military. Although Wilcox won in the federal district court, Mr. Wenig was able to reverse the judgment in the circuit court.

Assessing General DeWitt, Mr. Wenig describes him as "a very exacting person, . . . even natured in disposition," without any prejudices toward the Japanese.



Mr. Wenig participated in the writing of the government briefs in the three landmark Supreme Court decisions dealing with Japanese-American relocation, the Hirabayashi, Korematsu, and Endo cases. He helpfully provides citations for the cases, and describes their major points, noting the shifting of the Court's attitude as the military necessity argument became less urgent.

In concluding the interview, Mr. Wenig mentions his brief involvement in the investigation of an espionage ring before being called back to California to work on the Wilcox case.

Miriam Feingold Stein  
Interviewer-Editor

7 June 1976  
Regional Oral History Office  
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University of California at Berkeley





## I BACKGROUND

(Date of Interview: March 26, 1973)

Stein: Could you tell me a bit about when and where you were born?

Wenig: I was born in New York City. I had some schooling in the East, but I was brought up, for the most part, in Southern California. I attended Hollywood High School there, then went to Stanford University. I took my law at Stanford.

Stein: What got you interested in law?

Wenig: Oh, I think my general facility for English composition. I was always very active in oratory and debate. I won a national and international oratorical contest when I was in high school. This experience generally directed me to the possibility of using that facility in law.

[Interruption]

Stein: Did you go straight from Stanford into private practice?

Wenig: That's right. I started with the San Francisco law firm of Cullinan, Hickey, and Sweigert.

Stein: Was that a general law practice?

Wenig: Yes, with offices in the Mills Tower. I was there for about four years. Then I went with John L. McNab's office for a short time before coming to work with Earl Warren, in the office of the California Attorney General. As I told you, my first assignment was with the gambling ship cases.

Stein: You mentioned that you were active in the 1938 campaign?



Wenig: Yes. I worked in it. I was in charge of the speaker's bureau for Northern California and worked on radio presentations. We didn't have television then.

Stein: How had you gotten into that position?

Wenig: Bill Sweigert was also working on the campaign. I believe he was the San Francisco manager. There were three of us. Judge Thomas Coakley, I think, was Northern California manager, and Bill Sweigert was the San Francisco manager. That's how I came in contact with Warren.



## II THE CALIFORNIA ATTORNEY GENERAL'S OFFICE

### The Gambling Ship Cases

Stein: You said earlier that you came into the office as a result of the gambling ship cases?

Wenig: The gambling ships were outside the jurisdictional waters of the state of California. That was the basis for their operation, on the theory that they were outside the state, just as Nevada gambling is outside California.

I had become acquainted with Earl Warren when he was running for attorney general and had worked on the radio phases of his election campaign. I was in the office of Cullinan, Hickey, and Sweigert at that time. Warren called me in and said, "We have a rather sticky legal situation here. The gambling ships are operating full force off the Southern California coast, and the local authorities (meaning the district attorney of Los Angeles County) felt that there was a problem of jurisdiction, of his not being able to bring any charges against the operators of the gambling ships because of their location."

We had to work out a theory upon which the court would have jurisdiction. One theory was that gambling, if it were inside the state, would be considered a public nuisance. The maintenance of a gambling place is considered a nuisance. Sometimes, in the early days, there were public disturbances. Then there are the social impacts, people losing their wages and not supporting their families.

For these reasons and others, a public gambling place was considered a public nuisance at common law which could be enjoined or abated by court order. Well, here you had a public





Wenig: nuisance riding at anchor outside the three mile water boundary of the state. But all the effects and impacts were being felt within the state as California citizens went to and came from the ships.

Our theory was that if we could get personal jurisdiction over the owners of the ships and serve a court order on them in California, the court could order them to cease operating and maintaining a nuisance which had its bad effects inside California.

A similar situation would arise if you had smoke stacks of a copper mill in Nevada, but the smoke was blowing over into California causing a harmful environmental impact. We weren't thinking so much in those days about environment. I use it because it is a modern illustration. If we could serve an order on the operators of the mill, a California court could order the mill operators to cease maintaining the smoke-issuing stacks.

That was one theory. Then, also, they used a more direct approach. Maybe Oscar Jahnsen can give you more details. Did he tell you about the time when he took the Fish and Game Commission boat and went out and raided the gambling ships?

Stein: Yes, but I'd like to hear the story from you.

Wenig: Well, things which are used in carrying out an illegal operation, such as the chairs and tables used in running a gambling place, are regarded as contraband and can be destroyed. I think that Mr. Jahnsen had done that on several occasions in dealing with gambling establishments in Alameda when he was serving with Earl Warren when he was district attorney.

In the case of the gambling ships they got a Fish and Game boat and went out there, and gave it the same treatment. A suit was later brought for damages but the action of the authorities was upheld.

Stein: You, at this time, were helping in a capacity outside the attorney general's office, or were you in the office?

Wenig: Well, I was here as a special deputy.

Stein: When were you with Cullinan, Hickey and Sweigert, then?

Wenig: From 1934 to 1939.



Stein: Is that the Sweigert who is now judge?

Wenig: That is Judge William Sweigert, yes. Have you talked to him?

Stein: Yes.

Wenig: It was in '39 that I came in to the attorney general's office in a special capacity. Actually, I was paid by the undercover fund to work on the gambling cases.

### The Bookmaking Cases

Wenig: We went from the gambling ship cases to dealing with the widespread maintenance of bookmaking establishments in California. I think Mr. Olney may have told you about that.

Warren's approach, to use an expression of Attorney General Robert Kenny, was, "Cut off their water." (It's an old western expression.) The "water," meaning places the bookmaking occurred, was the almost immediate result of horse races seen at various tracks around the country.

Bookmaking establishments depend on this kind of information to keep going. Bettors, as they go from race to race, make money and they bet again, or if they lose money they'll try and make it up. But they have to have the information as the racing results occur.

So, the approach was--I believe that we filed an action in Los Angeles against the Nationwide News Service. Mr. Russell Brophy was Los Angeles manager of the Nationwide News Service. We soon enjoined eight hundred bookmaking establishments throughout California.

There, again, our approach was that the news service was contributing to the maintenance of an illegal establishment. Our position there was a little bit stronger because obviously the bookmaking establishments were in the state.

Stein: Just to back up for a second, wasn't that argument in the gambling ship cases about the nuisance theory ultimately overturned in the court?



Wenig: It was. It was ultimately overturned, and it was overturned in the Nationwide News Service case. The nuisance theory was overturned or rejected on the theory that while it's true that at common law a gambling establishment is regarded as a nuisance per se, by its very fact of being, the court said that the legislature, however, had undertaken to define what were nuisances. A gambling place was not on the list. If you maintained a pest house, or a house of prostitution, that would be a nuisance per se. But a gambling place wasn't defined as a nuisance. Consequently, a person couldn't be charged with contributing to something that wasn't a nuisance.

Stein: As I remember, though, by that time they'd taken care of a gambling ship anyway.

Wenig: Then it was a fait accompli. Later on, Congress passed a law prohibiting the transportation of persons from any place in the United States to a gambling ship. So, they reached it that way.

Stein: Wasn't there also the argument that actually the ships were within the state limits if you drew the boundary from point to point instead of along the coastline?

Wenig: Yes, I worked on that. That was an alternate theory in People against Cornero, I believe. I think in that case they upheld the state's approach for that particular case and his particular ship. There were other gambling ships where there was no question about them being outside. But Cornero's ship was in Santa Monica Bay, when the point to point was found to apply.

The issue in the Cornero case was whether Santa Monica Bay was a bay, because the jurisdictional boundary of the state includes three English miles seaward, plus all the bays thereof. A bay, generally, is determined by the straight line which you draw from point to point. It's still being argued in international law as to how long a line will constitute a bay, rather than having it regarded as an indentation or a change in the coast line.

I think that the rule is now that it can't be more than twenty-one miles, or something of that sort. But the British, the Danes, and the Norwegians, in connection with their fights over fishing rights, are still arguing in some cases as to what is a bay.

In this case they determined that Santa Monica Bay was a bay within that test.





Stein: In regard to the bookmaking cases, wasn't there also action taken with the phone company to cut off phone service to the bookmakers?

Wenig: Oh yes. I think we started to take action against the phone company. I think if you've interviewed the Chief, as we used to call him, he would tell you that he called in the president of Pacific Telephone and Telegraph Company. He was able to persuade him that the company should not assist in the maintenance of bookmaking establishments.

The bookmakers' daily bread is the receipt of news. You get the news by the telephone. So, if you could cut off the telephones, take out their telephones, then you would deal effectively with the bookmaking establishments.

We pursued the same theory when we sought to stop the flow of immediate racing news. I don't think we ever came to grips with the telephone company, because they just agreed that if we would inform them when we got the information that phones were being used in any bookmaking place, they would go in and take them out.

They, in turn, may have had some suits brought against them, because they're a public utility and the gamblers say, "It's none of your business, Mr. Telephone Company; we should have our phone."

In other states the phone companies resisted, claiming that they had an obligation to serve, and were not engaged in bookmaking themselves, and they had no business finding out what the phone was being used for.

I think that on the whole most of the courts have gone along on the theory that you cannot use the telephone to promote or assist the maintenance of an illegal operation.



The Coming of War and the Possibility of Martial Law

Stein: From the bookmaking cases what did you move on to?

Wenig: I think that took up a lot of our activities until we got into the possibility of war. Warren was very alert to the need for getting our thinking adjusted to what might happen, to what problems we might have in the event war eventuated, as it did.

As I recall, my next work was getting into what was at that time a little developed field; namely, what would be the situation if you had to declare martial rule or martial law in an area in time of war. We hadn't dealt with that problem any place since the Civil War, actually, (as compared to civil disturbances) where the thought was that you might have to impose certain restraints and restrictions and controls over the population in connection with the needs of providing protection to the areas of the state and the nation.

The last time that we had any cases involving the authority of a military commander in a military area was in the famous case of Ex Parte Milligan. I undertook to make a study of martial law or martial rule in time of war, and what its basis would be, and what would be the possible occasions for the exercise of this type of control by a military commander.

I believe if you'll look in one of the state bar journals, there is an article by Earl Warren entitled, "Martial Rule in Time of War," to which I made some small contributions.

Stein: We'll have to look that up and get it copied.

Wenig: It's a state bar journal, about 1940. In fact, showing this interest was one of the things that brought Warren to the attention of the public as being a person who was alert to the emerging problems, and a type of person they should have in the governorship, which put him in some contrast to Governor Olson.

We were then talking about the need for having curfews, blackouts, restricted areas, things of that sort, which either would be done by statute, if possible, but if there wasn't the time for passing a statute, then, of course, this is when the military commander would impose these restrictions under his authority of martial rule, which is based upon military necessity.



### The Japanese Relocation

Wenig: Then, also as part of this preparatory thinking, we looked at the situation of the concentration of Japanese in California, in view of the indicated likelihood that we might become involved in a war with Japan.

It would be interesting what came first. In your study do you recall when Warren undertook that investigation? Was that before or after the declaration of war?

Stein: That was after. That part of Warren's investigations was in February, 1942.

Wenig: The war broke out on December 7, 1941. In other words, it took some time for them to decide that they were going to evacuate the Japanese.

Stein: Yes, it took several months. I'm not quite sure when Warren first became involved, but I have a note here that on January 30 Warren said that he had come to the conclusion that "the Japanese situation as it exists in this state today may well be the Achilles heel of the entire civilian defense effort. Unless something is done it may bring about a repetition of Pearl Harbor."

Wenig: Was that a statement to the Tolan Committee?

Stein: No, the Tolan Committee wasn't until February. Warren testified February 21. February 2 was the conference of sheriffs and district attorneys called by Warren on the subject of alien land law enforcement. That was when the sheriffs and the DA's agreed to draw up maps plotting the location of Japanese landowners.

Wenig: Well, they probably were looking around for some means of dealing with the situation. At that time, I guess, the idea was the alien land law, which was in some cases being avoided, might meet the situation, somewhat, by being more strictly enforced.

In other words, we didn't really think in terms of the problems of the Japanese until after the attack on Pearl Harbor. We were just dealing generally, prior to the actual attack on Pearl Harbor, with this question of what would happen and what would be the situation if war occurred. It was after the Japanese attack that the problem of the concentration of the Japanese came to the fore. The question was: what to do about it.





Stein: Now, at this point you were still with the attorney general's office?

Wenig: Yes. I didn't go into the army until, I think, July of '42.

Stein: So you were with the attorney general's office, then, during the whole period that the decision was being made?

Wenig: Yes. I was still in the attorney general's office. The decision by President Roosevelt and General DeWitt to move the Japanese had already been made. I was working on the legal problem, however, while in the attorney general's office, and continued to do so after I went into the judge advocate's office. I didn't move very far. I just moved from here to the Presidio.

Stein: Could you explain exactly what the legal problem was that you were working on?

Wenig: Why, yes, of course. The problem would be the constitutionality of a group movement of people based upon the fact that they were of Japanese origin, which would include citizens.

Every citizen has the right to be treated equally by his government, and any action taken by a government based upon race alone is generally anathema to everyone. It was quite a problem, assuming that you had the danger, assuming that you had a basis for it, as to whether the courts would uphold the authority to carry out the terms of Executive Order 9066, that you've probably come across very frequently.

Stein: What were the arguments you were developing about the constitutionality of this?

Wenig: Well, in time of war, if there is a reasonable basis for believing that action is necessary, either action by the government in terms of the law that it passes, or by a military commander, the right would be found and recognized by the courts, but it would depend upon the factual basis.

Of course, as you know, Executive Order 9066 was based upon the impending danger of sabotage and espionage. The question would be whether, in fact, there was a reason for believing that the group of persons of Japanese ancestry in California presented a special danger of espionage or sabotage.



Wenig: There were the hearings of the Tolan Committee that went into the maintenance of cultural ties with Japan, the maintenance of emperor-worshipping ceremonies, the isolation of not only alien Japanese, but persons of Japanese ancestry, even though citizens, their isolation in groups in California that would tend to set them apart and have within their group persons who would be more loyal to the motherland, homeland.

Speaking of the homeland, some were American citizens by virtue of birth, some of them were recognized in Japanese laws as also having Japanese or dual citizenship.

Stein: This was the dual citizenship problem.

Wenig: Yes. These various factors would provide a basis, perhaps a reasonable basis, for the authorities believing that there was a special danger of sabotage and espionage from persons within the group.

But the key point, and this may be something that will be argued for some time, was not that there might be within the group persons who were loyal to Japan, but that the authorities did not have the time or the ability to identify those who were disloyal. Even if you had an identification process, it is a difficult thing to determine loyalty, or possible disloyalty. It's a very difficult thing to detect in any case. But the big point was that the authorities did not have the time nor the means to identify the disloyal. If they could, then it would be just the disloyal who should be moved.

Stein: Was this a departure from the earlier Justice Department program? At the very beginning, in December and January, the Justice Department seemed to feel that they could identify who would be the dangerous Japanese and intern only them.

Wenig: Well, they probably interned them. That would make a much clearer case, if they had had some hearing and determined that, because of their ties to Japan, or a number of the Japanese had gone back to school in Japan, or because they belonged to one of the martial groups. There were some societies devoted to the support of Japan and its war efforts in Manchukuo. It was like membership in very highly Japanese patriotic societies and things of that sort. I presume that those persons could be detained.



- Wenig: But I never got very close to that changeover, that difference of opinion with the Justice Department. Of course, the Justice Department, I presume, felt they could do it because they had an alien program dealing with the Germans.
- Stein: Did you come in contact at all with any of the Justice Department people, Mr. Rowe or Mr. Ennis?
- Wenig: Yes. I was in touch from time to time with Mr. Ennis. As a matter of fact, I'm still in touch with him.
- Stein: What sort of contact did you have with him?
- Wenig: It was mostly after the Hirabayashi case and the Korematsu case\* had gone up to the appellate level, exchanging memoranda and things of that sort.
- Stein: Was the attorney general's office also keeping an eye on the alien Italians and Germans?
- Wenig: My recollection is that we didn't pay attention to the alien Italians or Germans or those with possible disloyal connections. Of course, the army did. As you know, the army undertook to exclude, on an individual basis, some Italians and Germans from the military zone. They felt in those cases that they were able to do it on an individual basis.
- Stein: Do you know why it was that the attorney general's office wasn't paying much attention to it?
- Wenig: I don't think they recognized it as a sufficient danger.
- Stein: Why was that?
- Wenig: There wasn't the situation, in terms of numbers or the ability to identify individuals, that appeared to present a sufficient danger for the attorney general's office to get in touch with, as compared to the Japanese situation where you have large concentrations of them in areas where you could have either civil disturbances or you could have espionage or sabotage from persons in the group.

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\*In Hirabayashi v. United States 320 U.S. 81 (1943) and Korematsu v. United States 323 U.S. 214 (1944) the U.S. Supreme Court upheld various aspects of the evacuation and internment orders.





Stein: Were you yourself involved in drawing up the maps that showed where the Japanese were located?

Wenig: No. Did Warren Olney work on those maps?

Stein: Yes.

Wenig: I didn't have anything to do with it. I remember seeing them from time to time. As a matter of fact, later we put them in a couple of briefs.

Stein: The maps are now in The Bancroft Library.

Wenig: The attorneys general of California, Oregon, and Washington, filed what we call amicus curiae briefs in the Supreme Court. I think they used those maps showing the location of the Japanese held land in California.

Stein: How was the determination made as to who was Japanese in order to exclude them? What was the cut-off line?

Wenig: I had nothing to do with that. You mean, whether you're quarter Japanese--?

Stein: Yes.

Wenig: I think the army made a rough determination. One-half Japanese. I don't know what the proportion was.

Stein: I came across a note that in 1939 Attorney General Warren ruled that even one-eighth non-Caucasian blood was enough to make a person ineligible for marriage to a Caucasian. I wondered if he used that same percentage with the Japanese.

Wenig: I'm not aware of that, no.

Stein: Regarding martial law, how was the determination finally made not to declare martial law in California?

Wenig: They thought that they had enough statutory authority to deal with the matter. There wasn't a need at that time to go the martial law route. They had laws providing that persons should observe the curfew, for example, as issued by the commanding general, and they felt that there was enough state authority or federal authority, statutory-wise, so that it wouldn't be necessary to impose a system of martial law, such as they had in



Wenig: Hawaii. But we were set for it, in case it became necessary.

Stein: I don't know if you could get any sense of this, but how much influence do you think Warren had on DeWitt?

Wenig: Well, I was fairly close to the situation, obviously, being in the attorney general's office here and going on DeWitt's staff, and I don't think he [Warren] had much influence. I think DeWitt welcomed the fact that he had a vigorous law enforcement officer on the civil side of things. DeWitt's direction came from Washington.

By the way, on that very point, if you want to get some information on that, have you interviewed Colonel Karl Bendetsen? He could help you.

Stein: I wasn't able to see Colonel Bendetsen. Mr. Edward Ennis wrote a letter to introduce me to Mr. Bendetsen, who has just retired as chairman of the board of Champion Paper Company, in New York.\* Mr. Bendetsen's office informed me, however, that under no circumstances will he discuss the Japanese-American relocation with anybody, despite his having been approached several times in the last few years and asked to give interviews. His position is that all the information that he could give is in the army records.

Wenig: Well, that might be so. That book that you borrowed for me was an attempt to establish a record of the whys and the wherefors and so forth.\*\*

Bendetsen had a lot to do with the book, so it may be that it speaks for itself.

Stein: Colonel Bendetsen seemed to have played an active role.

Wenig: Oh yes, indeed. He was on duty, I believe, before the war. He

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\*See Appendix I, Edward Ennis, A Justice Department Attorney Comments on the Japanese-American Relocation, an interview conducted by the Earl Warren Project of the Regional Oral History Office.

\*\*U.S., Army, Western Defense Command, Final Report, Japanese Evacuation from the West Coast, 1942.



Wenig: was in the reserves and he was, I think, a liaison between the War Department and Capitol Hill. That's how he gradually worked into the Japanese program.

Stein: Did he have a lot of influence on the army's decisions?

Wenig: I think he was very directly involved in the decision-making process. Then, as you know, he was in charge of the civil affairs section of the Fourth Army, that was in charge of the whole relocation, as far as the army's part of the relocation procedure was concerned.





### III THE JUDGE ADVOCATE GENERAL CORPS

#### Joining General DeWitt's Staff

Stein: How did you come to join General DeWitt's staff? How did you move from the attorney general's office to the Presidio?

Wenig: It has somewhat of an amusing setting. When I was at Stanford, along with Karl Bendetsen, I was in the ROTC field artillery. He was a year ahead of me at Stanford, and we were both in the ROTC. However, I didn't keep up my reserve status.

I had applied for a commission in the judge advocate's corps, when the judge advocate was out here. General DeWitt knew that I had been working on matters connected with the Japanese evacuation. But unbeknownst to me, they were looking around for bodies, and they reactivated my old field artillery commission as a second lieutenant. At that time the lowest rank in the judge advocate corps was that of captain, just like the medical corps. You went in the judge advocate corps and you got a captaincy at the outset.

On the very same day, in this very building, I got two telegrams, one addressed to Captain Herbert Wenig, JAGC, and the other one addressed to Second Lieutenant Herbert Wenig, Coast Artillery, Anti-aircraft. They reactivated my commission. The very same day I got one telegram directing me to report up here at the Presidio, and the other directing me to go to Camp Callan.

Well, I had had enough law work, working here night and day on curfew orders and things of that sort. I wanted a change so I responded to the telegram sending me to Camp Callan, near San Diego. However, I hadn't been down there very long and they found



Wenig: out that I was in the army. They wanted me to work on the legal affairs in connection with the Japanese evacuation because I had been doing it. So, they transferred me, in grade!

My only distinction for the whole war, was that at that time I was the only second lieutenant in the judge advocate corps. I said, 'Well, Lord, now that you're going to make me do this work, can't I have the captaincy?'

They said, "Sorry, you're in the army now. You'll have to follow all the regular promotion procedures." So, it took some time to get up to that captaincy. I finally got out as a lieutenant colonel, but we laughed about that on a number of occasions. [Laughter]

### The Wilcox Case

Wenig: [Referring to interview outline] I noticed you asked about the Wilcox case. Where did you run across that?

Stein: You mentioned it the first time we talked.

Wenig: I see. There was a program of individual--not detention, but removal from the military areas of the Western Defense Command. This was a program for removing subversive persons, Japanese, German, American, of any origin, from the military areas of the West Coast. There were two military areas, one all along the West Coast, and then there's another area, I think going back towards Utah.

Wilcox was one of these, I wouldn't call him an agitator, but he belonged to a group which claimed that the war was a conspiracy amongst the warlords of the world.

Stein: An imperialist conspiracy.

Wenig: Yes. He claimed that the war was being waged as a means of depriving people generally of their liberties, and so forth, and also to make money for the industrial giants. He was advocating that the only way for the people to fight back would be to disobey rationing laws, curfew laws, and to oppose the operations of the war, generally.



Wenig: Dewitt issued an exclusion order against this chap Wilcox, who, following his own advice, decided to disobey it. So, one day he was greeted by a number of MPs and they just drove him outside the military zone and deposited him, I think, in Reno or someplace, wherever the boundary of the zone was.

The American Civil Liberties Union, in the person of Mr. Wirin, then brought an action against General DeWitt for damages, on the basis that there was no legal justification for removing Mr. Wilcox. Of course, this was quite a test case.

I remember I was by that time back in Washington on the staff of the Judge Advocate General, and had occasion from time to time to have luncheon with General DeWitt in the general's dining room. The generals were quite disturbed at the thought that a general could be sued in damages for an action that he might take in his official capacity in carrying out his responsibilities in a war area.

The federal district court actually did hand down a judgment for damages in favor of Wilcox. It was only a nominal amount. It was only \$100, but the message was clear. So, I spent a good deal of the last year in the service working on the Wilcox case.

Stein: Was it appealed from the federal district court?

Wenig: Yes. We reversed it in the circuit court.

Stein: I can imagine that would be quite an upsetting case in a time of war, to have civilians running around suing the military.

Wenig: Suing the military and the military wondering whether they're going to be dispossessed of all their goods by damage judgments against them. There was considerable concern.

I was held in the service for almost seven or eight months working on that case. I got it reversed in the circuit court, and then an appeal was taken to the Supreme Court and they turned it down. They didn't review it.

But General DeWitt was very much concerned about being sued by others. He was very careful about where he went in the Western Defense Command after the war was over. [Laughter]





Assessing General DeWitt

Stein: What was your general assessment of General DeWitt? What kind of person was he?

Wenig: He was a very general general. He was a very exacting person. I think he was very even natured in disposition. But when he acted, he acted firmly. I guess generals should.

I don't know what his background is. His brother was in the medical corps. He was at one time in charge, I think, of Letterman Hospital. Where did he come from, do you know?

Stein: No, I don't.

Wenig: Well, I saw no indication of a particular prejudice or preconceived notions with respect to the action that he took against the Japanese population. That's the reason I asked. I was wondering whether there was anything in his background, because some people do say that the action against the Japanese population was not motivated by real fears of sabotage or espionage or wartime considerations, but was just an expression of economic rivalry and general prejudice.

I never saw any indication of that either in this office or while I was on the staff at the Presidio.

Stein: From the reading I've done, I gather that that argument goes on that the Associated Farmers were hoping to get the Japanese landholdings.

Wenig: I was not aware of such a plan. However, I was very much in favor, if evacuation had to be done, of the government making as full restitution as it could, to make up for the losses suffered by the Japanese. I testified, as a matter of fact, before the congressional committee which held hearings before Congress enacted the compensation bill to compensate Japanese losses suffered as a result of being moved, and being required in many cases to sell their businesses and their property.

Stein: What came, ultimately, of the restitution?

Wenig: They had a regular program for filing of claims for losses and diminution in the value of property and so forth, and their claims were paid off.



Wenig: I don't know how full a matter of restitution it was. There are some things that they probably couldn't really appraise. Other losses were not compensable.

Stein: I was wondering about that, because the accusation has been made that they only got back 10% of the value of the land.

Wenig: Hardly adequate.

Stein: I have no idea if it's true or not.

Getting back to DeWitt for a moment, I've heard it said of DeWitt that he tended, perhaps a bit too much, to be swayed by the most recent person to have talked to him. I wondered if that was the impression you got of him?

Wenig: Well, I wasn't that close to him. After all, I was only a captain and then a major. The people who were close to him were the people who were his chief of staff, and Bendetsen and others like that.

I think he was a man who really made up his mind and was very firm in reaching his decisions. Once they were reached, he stayed by them.

Stein: How long were you in the judge advocate corps?

Wenig: I was in the service about five and a half years.

[Interruption]

Stein: You said that you became the judge advocate of the California National Guard?

Wenig: Yes.



The Hirabayashi, Korematsu, and Endo Cases

Stein: While you were in the judge advocate corps, that was when you were filing the three landmark cases? You mentioned Hirabayashi.

Wenig: And Korematsu, and Endo. I was involved in writing memorandums, legal advice in connection with those cases.

Stein: In those cases, were those maps of Japanese landholdings used in the government's brief, or just in the amicus curiae brief?

Wenig: I know that we used them in the state's briefs, the amicus curiae brief.

The three cases are interesting in illustrating the concept of when you can take what I consider to be drastic actions, such as the removal of a whole group of persons from an area, which have to be based upon military necessity.

Of course, in the atmosphere of war, the courts are very much inclined to give a lot of leeway to the determination of the War Department. Take the Hirabayashi case, which involved the violation of a curfew order. It was at the start of the war.

Then you have the Korematsu case, which involved a more drastic action, namely, evacuation. The court still felt that there was some basis for the army's decision.

So, then we come to Endo, which was two years later in '42, I think it was.

Stein: It was '44.

Wenig: Was it '44 when the decision was made?

Stein: Actually Korematsu and Endo, according to my notes, were decided the same year, '44.

Wenig: As a matter of fact, they're in the same volume of the Supreme Court reports. But, I think the Korematsu case went back to an earlier matter; it went back to the evacuation order.

The Endo case involved detention at a detention center. By that time the distinction was that they had undertaken to separate the so-called loyal from the disloyal. These were





Wenig: hearing boards composed of teams of officers (I think some civilians were on it) going around holding these hearings, called loyalty hearings. The intention was, at least, to survey all those who were detained, and just keep those with respect to whom they had some belief that they might be dangerous.

In the case of Miss Endo, who came from Sacramento, as I recall, they had had a hearing and determined that she was not a risk. The court said that she had a right to get out of the detention camp, despite the general exclusion order, the continuation of which was partly based upon hostility of the public to Japanese in the western coastal states.

That was in '44, and I guess the war was about over by then. The prospect by then of a possibility of a surprise attack on the West Coast had passed.

Stein: Did the court review the reasons for military necessity in these cases?

Wenig: Yes. Take a look at them. I have the citations here. The Korematsu case is 323 US 214, and the Endo case is at 323 US 283. You ought to read them, because this is what the court was accepting as the basis for concluding that there was a sufficient reasonable basis for the taking of this action.

Then there's the earlier case, the curfew case, Hirabayashi, 319 US 432.

You'll see this shifting of attitude, and that's the way it should be. You should be able to take action like this if there is a military reason and necessity as the basis for it.

Of course, you'll find some very strong dissenting opinions in the Korematsu decision.

Stein: Who was it who dissented in that?

Wenig: Justice Frank Murphy did. Justice Robert Jackson, I think, dissented, too.

Stein: Has Korematsu ever been reversed?



Wenig: No. Korematsu has been cited in other cases, on the basis that only in the direst circumstances should such action be upheld.

Stein: What sort of cases would it be cited in?

Wenig: I can't remember now. Well, I would say, do you remember when the President stopped the steel strike on the basis of interference with the Korean War?

Stein: Yes.

Wenig: He ordered that, and I think they cited Korematsu in that instance, where action can be taken under the war power of the President. But once authority is upheld there is a tendency to have it continue in effect. Everyone should be vigilant to see that it is rejected once the real necessity no longer exists.

Stein: Were you still in the service when the Japanese returned to California, and the detention centers were disbanded?

Wenig: I think so, yes. But I had nothing to do with that. By that time I was engaged in trying some court martial charges against a number of spies that we had in our army.

The Germans had succeeded in indoctrinating some persons of American citizenship when they lived in Germany, and then infiltrating them into the army. They sent them over here, and then they were inducted into the army. We learned about it later. I was tracing down an espionage ring. The German agents in our services were supposed to send their information to "letter drop" agents in neutral countries.

I was taken off those court martial cases, the spy cases, to write the brief in the Wilcox case in the federal circuit court. It was a shame, because I had the most marvelous set of orders you ever saw. Espionage rings are all over the world, and often in neutral countries. There are letter drops and nothing goes directly. They go from one agent to the other. So, the orders read to proceed to France, Switzerland, Germany, Holland, Norway, Turkey, Argentina, Florida, and back to Washington. I was already on my way to Turkey, but DeWitt persuaded the judge advocate general, General Green, to detach me from that case and to assign me back to work on his case.



Stein: You were in the midst of a world tour. [Laughter]

Wenig: I had to go to Southern California, because that's where the Wilcox case was.

Stein: We got the story, pretty well, for the Wilcox case, didn't we?

Wenig: Yes. You ought to read that, too. The case is Wilcox v. DeWitt.

Stein: Would that be a federal district court decision, or the circuit court?

Wenig: The circuit court.

Stein: Well, I'd like to thank you for taking time from your busy schedule for us. This is a most valuable addition to the Warren Project.

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